

REGULAR MEETING  
APRIL 5, 2010

IN CITY COUNCIL  
ABSENT:

CONVENED:  
ADJOURNED:

1. Minutes of the City Council Meeting, March 22, 2010.
2. Communication from the Mayor re: transfer request in the amount of \$10,000.00 from Fuel & Lubricants to Repair/Maintenance Supplies.
3. Communication from the Mayor re: intradepartmental requests from the Department of Public Facilities totaling \$106,915.00 intended to supplement funding in certain accounts from other accounts with anticipated surpluses.
4. Communication from the Mayor re: two transfer requests in the amount of \$10,100.00 from Sr. Tr. Chemist to Pumping Station Maintenance and \$1,200.00 from Sr. Tr. Chemist to Interim Foreman as explained in the transfer.
5. Communication from City Solicitor, Don Rider, re: Special Permit, Jam Enterprises, LLC, in proper legal form, Order No. 09/10-1002361B.
6. Electronic Communication from the Assistant City Solicitor, Cynthia Panagore Griffin, re: modification of Special Permit, New England Sports Center, Order No. 10-1002448A.
7. Communication from the Gutierrez Company re: petition for a Zoning change to Map 78, Parcels 12, 38, 39 and Map 89, Parcel 77.
8. Communication from David Gadbois re: request for an extension for Sewer Connection Permit, Devonshire at 495 Center, X-08-1001834A, X-01-9039.
9. Communication from Attorney Bergeron re: Toll Brothers, Country Club Estates approval of the adjustment of the boundary of the right-of-way so as to include the new land being conveyed.
10. Communication from Attorney Bergeron re: Proposed Zoning change of Rawchuck land, a set of parcels containing a total of over 88 acres.
11. Communication from Attorney Bergeron re: Proposed Comprehensive Special Permit application to allow preservation and adaptive reuse of the Walker home on Framingham Rd. while also allowing construction of 17 new homes.
12. Minutes, Planning Board, March 8, 2010.
13. Minutes, Traffic Commission, February 23, 2010.
14. CLAIMS:
  - A. Leanne Doherty, 28 Upland Rd., other
  - B. Lauren Medeiros, 37 Mohican Path, pothole or other road defect
  - C. Albert Tambollo, 47 Emer Rd., residential mailbox claim 2(b)
  - D. Amy Lombard, 18 Williamsburg Ct. #12 Shrewsbury, pothole or other road defect
  - E. Bill Wing, 86 Graham Path., residential mailbox claim 2(b)
  - F. Robert Nicholas, 24 Giasson St. #3, Hudson, pothole or other road defect
  - G. Hector Simosa, 87 Stetson Dr., pothole or other road defect
  - H. Hongjiang Li, 82 Barton Dr., Sudbury, pothole or other road defect
  - I. Steve Smith, 155 Milk St. #14, Westborough, pothole or other road defect
  - J. Harold Morse, 5 Red Spring Rd., pothole or other road defect

REPORTS OF COMMITTEES:

## UNFINISHED BUSINESS:

**From Public Services Committee**

15. **Order No. 10-1002450 – Application for Junk Dealer's License for Steven Weener, d/b/a Thriftboro for 344 Boston Post Rd. Recommendation of the Public Services Committee is to approve 2-0 subject to a favorable report from Chief Leonard. Councilor Clancy was absent.**
16. **Order No. 10-1002449 – Application for Junk Dealer's License for Igal Ismaili d/b/a I & P USA Corporation for the Solomon Pond Mall. Recommendation of the Public Services Committee is to approve 2-0 subject to a favorable report from Chief Leonard. Councilor Clancy was absent.**
17. **Order No. 10-1002467A – That the City Code of the City of Marlborough be amended to grant transfer station stickers FREE OF CHARGE to Disabled American Veterans. Recommendation of the Public Services Committee is to approve the Proposed Ordinance and under Suspension of the Rules to advertise the Ordinance and place item of the April 5, 2010 agenda which will comply with the ten day period. Councilor Clancy was absent.**

**From Finance Committee**

18. **Order No. 09/10-1002197-3 – Increase Snow and Ice Deficit by \$200,000.00.** The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the increase of the snow and ice deficit by \$200,000.00. The City Council has previously approved \$1,000,000.00 in deficit spending for the snow and ice account. The revised authorization of deficit spending the snow and ice account is \$1,200,000.00. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
19. **Order No. 10-1002475 — Transfer \$92,907.39 from Insurance Proceeds to Public Facilities capital outlay.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$92,907.39 from insurance proceeds to the Public Facilities capital outlay for the replacement of the chiller unit at the high school. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
20. **Order No. 10-1002476 — Transfer \$51,003.96 from various accounts to cover the Fire Chiefs Retirement.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$51,003.96 from the accounts listed below to cover the retirement costs for the Fire Chief.
  - \$13,790.40 from Fringes to Fire Chief Salary
  - \$13,137.60 from Fringes to Fire Sick Leave Buy Back
  - \$12,364.26 from Interest on Ban to Fire Sick Leave Buy Back
  - \$11,711.70 from Undesignated Funds to Fire Sick Leave Buy Back

**The first motion to deny the transfers did not pass — one in favor (Councilor Delano) and four opposed. Recommendation of the Finance Committee is to approve the transfers 4-1. Councilor Delano opposed.**

21. **Order No. 10-1002477 – Transfer \$37,500.00 from Undesignated Funds to Open Space Stabilization.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$37,500.00 from the Undesignated Funds to the Open Space Stabilization account that moves the fiscal year 2009 funds collected from wireless fees. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
22. **Order No. 10-1002478 – Transfer \$12,239.06 from Fire Fighter Salary to Fire Fighter Overtime.** The Finance Committee reviewed the Mayor's letter dated February 26, 2010 requesting the transfer of \$12,239.06 from the fire fighters salary account to the fire fighter overtime account. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
23. **Order No. 10-1002479 – Transfer \$300.00 from Contract Services to Travel in the Weights and Measurement Department.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$300.00 from the contract services to the travel account in the Weights and Measurement department. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
24. **Order No. 10-1002480 – Transfer \$43,000.00 from Undesignated Funds to Various DPW Accounts.** The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the transfer of \$43,000.00 from the Undesignated Funds to various DPW water accounts to cover emergency water repairs. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
25. **Order No. 10-1002481 – Intra-Department Transfer of \$44,500.00 in the DPW Department.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the DPW intra-department transfer of \$44,500.00. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
26. **Order No. 10-1002482 – Transfer \$14,000.00 from Undesignated Funds to Forestry Overtime.** The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the transfer of \$14,000.00 from the Undesignated Funds to the Forestry Department overtime account. **Recommendation of the Finance Committee is to approve the transfer 5-0.**
27. **Order No. 10-1002483 – Water Conservation Grant for \$38,000.00.** The Finance Committee reviewed the Mayor's letter dated February 26, 2010 requesting the approval of \$38,000.00 Water Conservation Grant to purchase a data logger to assist in pinpointing leaks in the water system. **Recommendation of the Finance Committee is to approve the grant 5-0.**
28. **Order No. 10-1002484 – State 911 Training for \$14,574.00.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$14,574.00 State 911 Training for the training of public safety dispatchers. **Recommendation of the Finance Committee is to approve the grant 5-0.**

29. **Order No. 10-1002485 – State 911 Department Support and Incentive Program Grant for \$84,195.00.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$84,195.00 State 911 Department Support and Incentive Program grant for the purchase of a new fire alarm receiving and alerting system. **Recommendation of the Finance Committee is to approve the grant 5-0.**
30. **Order No. 10-1002486 – Traffic and Enforcement Equipment Grant for \$13,000.00.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$13,000.00 Traffic and Enforcement Equipment Grant for traffic enforcement overtime and traffic enforcement equipment **Recommendation of the Finance Committee is to approve the grant 5-0.**

**From Urban Affairs Committee**

31. **Order No. 09/10-1002361B - Application for Special Permit by Jam Enterprises, LLC for a drive-thru window at proposed Sonic Restaurant, Boston Post Rd. West, Map 89, Part of Parcel 77. Recommendation of the Urban Affairs Committee is to recommend approval of the proposed decision as amended and under Suspension of the Rules, to refer to City Solicitor to be put in proper form, and place item on the April 5, 2010 agenda 2-0. MOTION made by Councilor Pope to add the Job Fair Condition to the Special Permit language for the April 5, 2010 City Council meeting which carries. Councilor Ferro requested to be recorded in opposition.**

**From Personnel Committee**

32. **Order No. 09/10-1002386 - Appointment of Deborah Puleo as Collector effective February 1, 2010 (order carried over to 2010). Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**
33. **Order No. 10-1002460 - Appointment of Joyce Torelli to CDA to a term which expires June 25, 2012 due to the resignation of Camille Duridas. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**
34. **Order No. 10-1002433 - Appointments of Robyn Ripley, Nena Bloomquist, and Susan Laufer to Library Board of Trustees for terms of 3 years, expiring Feb.4, 2013. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**
35. **Order No. 10-1002443 - Appointment of Dr. Jay Jahanmir to the Board of Health for a term to expire Feb.6, 2011. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**
36. **Order No. 09/10-1002385 - Appointment of Tony Trodella as Chief Assessor for a term of five years effective Feb. 1, 2010 (order carried over to 2010) Recommendation of the Personnel Committee is to approve 3-0.**
37. **Order No. 10-1002432 - Appointment of Anthony Arruda to the Board of Assessors for a term of three years expiring Feb. 4, 2013. Recommendation of the Personnel Committee is to approve 3-0.**



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

**Lisa M. Thomas  
140 Main St.**

**Marlborough, MA 01752  
(508) 460-3775 FAX (508) 460-3723  
MARCH 22, 2010**

Regular meeting of the City Council held on Monday, MARCH 22, 2010 at 8:00 p.m. in City Council Chambers, City Hall. City Councilors present: Levy, Ossing, Pope, Vigeant, Delano, Ferro, Elder, Juare, Seymour, Clancy and Landers. Meeting adjourned at 9:15 p.m.

ORDERED: That the minutes of the City Council Meeting March 8, 2010, **FILE**; adopted.

ORDERED: That the Capital Bond Request for FY2010, refer to **FINANCE COMMITTEE**; adopted.

**MOTION made by Councilor Ferro to refer to Finance Committee with instructions to report its recommendations, if any, to the full City Council by the April 26, 2010 meeting of the City Council, APPROVED.**

ORDERED: That the Bond request in the amount of \$4,000,000.00 for partial construction of the new sewer services in the Sudbury St. area, refer to **FINANCE COMMITTEE**; adopted.

**MOTION made by Councilor Ferro to refer to Finance Committee with instructions to report its recommendations, if any, to the full City Council by the April 26, 2010 meeting of the City Council, APPROVED VIA ROLL CALL.**

**Yea: 8 -Nay: 3**

**Yea: Delano, Ferro, Elder, Juare, Seymour, Clancy, Landers, & Levy**

**Nay: Ossing, Pope, & Vigeant**

ORDERED: That the reappointments of Edward Clancy and Dennis Demers to the Conservation Commission for three year terms expiring March 5, 2013, refer to **PERSONNEL COMMITTEE**; adopted.

**Councilor Clancy abstained**

ORDERED: That reappointment of Linda Clark as Registrar of Voters for a term expiring April 1, 2013, refer to **PERSONNEL COMMITTEE**; adopted.

**Councilor Ferro abstained**

ORDERED: Pursuant to City Council Order No. 08-1001774B authorizing a lease effective July 1, 2008 to the Assabet Valley Collaborative of the former Bigelow School located at 57 Orchard Street, for a one-year term with the option to renew for four additional one-year terms, and the terms and conditions of the original lease, said renewal being the second of four options was approved by the School Committee on March 9, 2010, a copy of which is attached hereto and incorporated herein, said lease is hereby renewed for the one-year term from July 1, 2010 to June 30, 2011 with a three (3%) percent increase in the amount of \$153,985.00 (\$10.30 per square foot), **APPROVED**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to relocate P.22 and P.23 on Forest St. due to a city road widening project, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to install new P.48 45' ± west of existing P.48 and install intermediate P.47-50 120' ± west of existing P.47 for the purpose of moving P.48 out of the proposed future road entrance on Forest St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 26, 2010** as date for a **PUBLIC HEARING** on the Petition from Massachusetts Electric Co. and Verizon New England, Inc. to relocate P.35 and P.37 3' ± from present location to back of sidewalk due to a city road widening project on Forest St., refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from John Crowe Associates, Inc. re: Extension of Time for Sewer Connection Permit, Boston Scientific Way, to December 1, 2011, Order No. 09-1002136, X-06-1001093, X-04-100564, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the minutes, Planning Board, February 22, 2010, **FILE**; adopted.

ORDERED: That the minutes, Traffic Commission, January 26, 2010, **FILE**; adopted.

ORDERED: That the following **CLAIMS**, refer to the **LEGAL DEPARTMENT**; adopted.

- A. Avneet Sawhney, 61 Robert Rd., residential mailbox claim 2(a)
- B. Paula Oliveira, 10 Hardy Rd., residential mailbox claim 2(b)
- C. Donna Coffin, 44 Ahlgren Dr., pothole or other road defect
- D. Paul Bongiorno, 21 Susan Rd., pothole or other road defect
- E. Baha Javid, 1 Stone Hill Rd., other property damage and/or personal injury

#### Reports of Committees:

Councilor Juare reported the following out of the Public Services Committee:

**Order No. 10-1002450 – Application for Junk Dealer's License for Steven Weener, d/b/a Thriftboro for 344 Boston Post Rd. Recommendation of the Public Services Committee is to approve 2-0 subject to a favorable report from Chief Leonard. Councilor Clancy was absent.**

**Order No. 10-1002449 – Application for Junk Dealer's License for Igal Ismaili d/b/a I & P USA Corporation for the Solomon Pond Mall. Recommendation of the Public Services Committee is to approve 2-0 subject to a favorable report from Chief Leonard. Councilor Clancy was absent.**

**Order No. 10-1002467 – That the City Code of the City of Marlborough be amended to grant transfer station stickers FREE OF CHARGE to Disabled American Veterans. Recommendation of the Public Services Committee is to approve the Proposed Ordinance and under Suspension of the Rules to advertise the Ordinance and place item of the April 5, 2010 agenda which will comply with the ten day period. Councilor Clancy was absent.**

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Councilor Ossing reported the following out of the Finance Committee:

**Order No. 09/10-1002197-3 – Increase Snow and Ice Deficit by \$200,000.00.** The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the increase of the snow and ice deficit by \$200,000.00. The City Council has previously approved \$1,000,000.00 in deficit spending for the snow and ice account. The revised authorization of deficit spending the snow and ice account is \$1,200,000.00. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002475 — Transfer \$92,907.39 from Insurance Proceeds to Public Facilities capital outlay.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$92,907.39 from insurance proceeds to the Public Facilities capital outlay for the replacement of the chiller unit at the high school. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002476 — Transfer \$51,003.96 from various accounts to cover the Fire Chiefs Retirement.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$51,003.96 from the accounts listed below to cover the retirement costs for the Fire Chief.

- \$13,790.40 from Fringes to Fire Chief Salary
- \$13,137.60 from Fringes to Fire Sick Leave Buy Back
- \$12,364.26 from Interest on Ban to Fire Sick Leave Buy Back
- \$11,711.70 from Undesignated Funds to Fire Sick Leave Buy Back

**The first motion to deny the transfers did not pass — one in favor (Councilor Delano) and four opposed. Recommendation of the Finance Committee is to approve the transfers 4-1. Councilor Delano opposed.**

**Order No. 10-1002477 – Transfer \$37,500.00 from Undesignated Funds to Open Space Stabilization.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$37,500.00 from the Undesignated Funds to the Open Space Stabilization account that moves the fiscal year 2009 funds collected from wireless fees. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002478 – Transfer \$12,239.06 from Fire Fighter Salary to Fire Fighter Overtime.** The Finance Committee reviewed the Mayor's letter dated February 26, 2010 requesting the transfer of \$12,239.06 from the fire fighters salary account to the fire fighter overtime account. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002479 – Transfer \$300.00 from Contract Services to Travel in the Weights and Measurement Department.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the transfer of \$300.00 from the contract services to the travel account in the Weights and Measurement department. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

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**Order No. 10-1002480 – Transfer \$43,000.00 from Undesignated Funds to Various DPW Accounts.** The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the transfer of \$43,000.00 from the Undesignated Funds to various DPW water accounts to cover emergency water repairs. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002481 – Intra-Department Transfer of \$44,500.00 in the DPW Department.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the DPW intra-department transfer of \$44,500.00. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002482 – Transfer \$14,000.00 from Undesignated Funds to Forestry Overtime.** The Finance Committee reviewed the Mayor's letter dated March 4, 2010 requesting the transfer of \$14,000.00 from the Undesignated Funds to the Forestry Department overtime account. **Recommendation of the Finance Committee is to approve the transfer 5-0.**

**Order No. 10-1002483 – Water Conservation Grant for \$38,000.00.** The Finance Committee reviewed the Mayor's letter dated February 26, 2010 requesting the approval of \$38,000.00 Water Conservation Grant to purchase a data logger to assist in pinpointing leaks in the water system. **Recommendation of the Finance Committee is to approve the grant 5-0.**

**Order No. 10-1002484 – State 911 Training for \$14,574.00.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$14,574.00 State 911 Training for the training of public safety dispatchers. **Recommendation of the Finance Committee is to approve the grant 5-0.**

**Order No. 10-1002485 – State 911 Department Support and Incentive Program Grant for \$84,195.00.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$84,195.00 State 911 Department Support and Incentive Program grant for the purchase of a new fire alarm receiving and alerting system. **Recommendation of the Finance Committee is to approve the grant 5-0.**

**Order No. 10-1002486 – Traffic and Enforcement Equipment Grant for \$13,000.00.** The Finance Committee reviewed the Mayor's letter dated March 3, 2010 requesting the approval of \$13,000.00 Traffic and Enforcement Equipment Grant for traffic enforcement overtime and traffic enforcement equipment. **Recommendation of the Finance Committee is to approve the grant 5-0.**



Councilor Levy reported the following out the Urban Affairs Committee:

**Order No. 09/10-1002361B - Application for Special Permit by Jam Enterprises, LLC for a drive-thru window at proposed Sonic Restaurant, Boston Post Rd. West, Map 89, Part of Parcel 77. Recommendation of the Urban Affairs Committee is to recommend approval of the proposed decision as amended and under Suspension of the Rules, to refer to City Solicitor to be put in proper form, and place item on the April 5, 2010 agenda 2-0. MOTION made by Councilor Pope to add the Job Fair Condition to the Special Permit language for the April 5, 2010 City Council meeting which carries. Councilor Ferro requested to be recorded in opposition.**

Councilor Delano reported the following out of the Personnel Committee:

**Order No. 09/10-1002386 - Appointment of Deborah Puleo as Collector effective February 1, 2010 (order carried over to 2010). Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**

**Order No. 10-1002460 - Appointment of Joyce Torelli to CDA to a term which expires June 25, 2012 due to the resignation of Camille Duridas. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**

**Order No. 10-1002433 - Appointments of Robyn Ripley, Nena Bloomquist, and Susan Laufer to Library Board of Trustees for terms of 3 years, expiring Feb.4, 2013. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**

**Order No. 10-1002443 - Appointment of Dr. Jay Jahanmir to the Board of Health for a term to expire Feb.6, 2011. Recommendation of the Personnel Committee is to approve 2-0. Councilor Juairé was absent.**

**Order No. 09/10-1002385 - Appointment of Tony Trodella as Chief Assessor for a term of five years effective Feb. 1, 2010 (order carried over to 2010) Recommendation of the Personnel Committee is to approve 3-0.**

**Order No. 10-1002432 - Appointment of Anthony Arruda to the Board of Assessors for a term of three years expiring Feb. 4, 2013. Recommendation of the Personnel Committee is to approve 3-0.**

**Suspension of the Rules requested - granted**

**ORDERED:** That the transfer request in the amount of \$10,000.00 which moves funds from Undesignated to Other Celebration-Special Events, **APPROVED**; adopted.

**FROM:**

Acct. # 10000-35900

\$10,000.00

Undesignated Fund

**TO:**

Acct. # 16920006-53710

\$10,000.00

Celebration-Special Events

**Councilor Pope abstained**

**Suspension of the Rules requested - granted****ORDERED:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 540, ENTITLED "SOLID WASTE," AS FOLLOWS:

Section 540-20, entitled "Issuance of stickers," is hereby amended by adding thereto a new subsection F:

- F. There shall be no annual fee for stickers issued to Marlborough residents who are disabled American veterans. Any Marlborough resident claiming status as a disabled American veteran, in addition to presenting a Massachusetts motor vehicle registration to prove Marlborough residence, shall also present proof of membership in the Disabled American Veterans or other suitable documentary proof of both veteran and disabled status,

**ADVERTISED AND PLACE ON APRIL 5, 2010 AGENDA; adopted.**

**Suspension of the Rules requested - granted**

**ORDERED:** That, in order to reduce interest costs, the Treasurer with the approval of the Mayor is authorized to issue refunding bonds pursuant to Chapter 44, Section 21A of the Massachusetts General Laws to refund all or a portion of the outstanding amounts of the City's Municipal Purpose Loan of 1999 Bonds and Municipal Purpose Loan of 2001 Bonds, dated June 15, 1999 and June 15, 2001, respectively; that the refunding bonds shall be issued in an amount not to exceed \$18,000,000, in order to pay principal of, redemption premium, if any, and interest on the bonds to be refunded, and costs of issuance of the refunding bonds; and that the Treasurer is authorized to execute such documents, including, without limitation, a refunding trust agreement or escrow agreement with a bank or trust company, and to take any action as may be necessary or desirable to carry out this transaction. Further, the amount authorized by this loan order shall be reduced by any lump sum grant payment from the Massachusetts School Building Authority, **APPROVED; adopted.**

**Yea: 11 -Nay: 0**

**Yea: Delano, Ferro, Elder, Juairé, Seymour, Clancy, Landers, Ossing, Pope, Vigeant & Levy**

**Suspension of Rules requested-granted**

**ORDERED:** That the Application for Special Permit by Jam Enterprises, LLC for a drive-thru window at proposed Sonic Restaurant, Boston Post Rd. West, refer to **CITY SOLICITOR TO BE PUT IN PROPER FORM AS AMENDED TO INCLUDE COUNCILOR POPE'S MOTION TO ADD THE JOB FAIR CONDITION IN THE SPECIAL PERMIT LANGUAGE FOR APRIL 5, 2010 CITY COUNCIL MEETING; adopted.**

**Councilor Ferro requested to be recorded in opposition to the proposed amendment which adds the Job Fair Condition language in the Special Permit.**

**ARBOR DAY PROCLAMATION**

*WHEREAS*, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and  
*WHEREAS*, the holiday, called Arbor Day, was first observed with the planting of more than one million trees in the state of Nebraska, and  
*WHEREAS*, Arbor Day is now observed through the nation and the world, and  
*WHEREAS*, the Commonwealth of Massachusetts celebrates Arbor Day on the last Friday of the month of April, and  
*WHEREAS*, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife, and  
*WHEREAS*, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products, and  
*WHEREAS*, trees in the City of Marlborough increase property values, enhance the economic vitality of business areas, and beautify our community.

*NOW, THEREFORE, BE IT RESOLVED* that the Marlborough City Council does hereby proclaim the last Friday of the month of April as Arbor Day in the City of Marlborough, and *BE IT FURTHER RESOLVED* that the Marlborough City Council does hereby urge all citizens of Marlborough to celebrate Arbor Day by either planting a tree or maintaining existing trees to promote the well-being of this and future generations, **APPROVED**; adopted.

**ORDERED:** That the designation of the Personnel Director as the City's liaison to the Ethics Commission, **APPROVED**; adopted.

**Councilors Ossing, Vigeant, Landers and Pope requested to be recorded in opposition.**

**ORDERED:** That the City Council of the City of Marlborough, having received the attached determination made by the Commissioner of the Department of Public Works ("DPW") pursuant to MGL c. 40, §15A that a portion of municipal property located in the vicinity of the Westerly Wastewater Treatment Plant at 303 Boundary Street, currently under the DPW's care, custody, management and control for sewerage purposes, is no longer needed for such sewerage purposes, said portion of property being limited to a 50' by 50' compound area along with a 20' wide access and utility road connecting from Boundary Street and running thereto ("the Property"), all as depicted by Verizon Wireless on plans entitled, "Verizon Wireless, 400 Friberg Parkway, Westborough, MA 01581, Proposed 150' Monopole and Equipment Shelter with Cable Tray, Marlborough West, 303 Boundary Street, Marlborough, Massachusetts (Middlesex County)," most recently revised on February 23, 2010 and as may be further revised through the special permit process for the water supply protection district, **NOW THEREFORE**, said Property is hereby transferred, by a two-thirds vote of the City Council, to the DPW's care, custody, management and control for the municipal purposes of 1) a lease of the Property to Verizon Wireless, its parents, subsidiaries, affiliates, successors and assigns; and 2) the construction by Verizon Wireless, its parents, subsidiaries, affiliates, successors and assigns, of a telecommunications tower and associated equipment shelter, as well as the access and utility road from Boundary Street, **APPROVED**; adopted.

**Yea: 11 -Nay: 0**

**Yea: Delano, Ferro, Elder, Juairé, Seymour, Clancy, Landers, Ossing, Pope, Vigeant & Levy**

**ORDERED:** That the City Council of the City of Marlborough, having voted to transfer the Property from sewerage purposes to the DPW's care, custody, management and control for telecommunications leasing and construction purposes, does hereby declare the Property to be available for disposition by lease pursuant to the provisions of M.G.L. c. 30B, §16(a), and further, does hereby authorize the Mayor, pursuant to MGL c. 40, § 3, to negotiate and enter into a lease with Verizon Wireless, its parents, subsidiaries, affiliates, successors and assigns, regarding the Property **APPROVED**; adopted.

**ORDERED:** That the transfer request in the amount of \$22,082.00 which moves funds from Fringes to Sick Leave Buy Back account for budgeted expenses associated with an employee's retirement in DPW, **APPROVED**; adopted.

FROM:

Acct. # 11990006-51500

\$22,082.00

Fringes

TO:

Acct. # 14001303-51920

\$22,082.00

Sick Leave Buy Back

**ORDERED:** That the intra-departmental transfer request with explanations as follows, **APPROVED**; adopted.

CITY OF MARLBOROUGH									
--BUDGET TRANSFERS --					FISCAL YEAR: 2010				
DEPT: PUBLIC WORKS					TO ACCOUNT:				
FROM ACCOUNT:									
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$30,707	\$4,000.00	61090001	50460	Water Meter Reader	\$4,000.00	61090003	51470	Interim Foreman	\$3,129
	Reason:	Funds available due to Workman's Comp Injury				Funds needed to cover GF resignation and lack of foremen			
\$257,017	\$390.00	61090001	50740	Equipment Operator	\$390	61090003	51940	Clothing Allowance	\$2,580
	Reason:	Funds available due to Workman's Comp Injury				Shortage was caused by new hires in Water & Sewer Division who are eligible for Clothing Allowance with 60 days of hire.			
\$58,882	\$31,000.00	60080001	50890	Sr. Chemist	\$31,000	61090006	52322	Water - Plant	\$11,215
	Reason:	Monies available due to retirement				Monies needed to produce excess water to reduce demand on MWRA water purchase at a substantially higher cost.			
\$257,017	\$22,000.00	61090001	50740	Equipment Operator	\$22,000	61090006	52322	Water - Plant	\$11,215
	Reason:	Funds available due to Workman's Comp Injury				Monies needed to produce excess water to reduce demand on MWRA water purchase at a substantially higher cost.			

**CITY OF MARLBOROUGH****DECISION ON A SPECIAL PERMIT PETITION****CITY COUNCIL ORDER NO. 09-1002161****FINDINGS OF FACTS AND RULINGS**

The City Council of the City of Marlborough hereby grants a Special Permit to Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Celco Partnership, d/b/a Verizon Wireless, having a usual place of business at 400 Friberg Parkway, Westborough, Massachusetts, 01581, for a Wireless Communications Facility ("WCF") at the Marlborough Westerly Wastewater Treatment Plant ("WWTP") located at 303 Boundary Street in Marlborough, based upon and subject to the following evidence, findings of facts and conditions.

**EVIDENCE**

The Applicant is Bell Atlantic Mobile of Massachusetts Corporation, Ltd., and Celco Partnership, d/b/a Verizon Wireless, having a usual place of business at 400 Friberg Parkway, Westborough, Massachusetts, 01581.

The Applicant is licensed by the Federal Communications Commission (FCC) to operate as a personal wireless services provider for the development and operation of personal wireless services facilities, as those terms are defined under the FCC Regulations and the 1996 Telecommunications Act, codified at 47 U.S.C.A., Section 332, and the Applicant's facility falls under the definition of a Wireless Communication Facility (WCF) as defined in the City of Marlborough Zoning Ordinance.

The Applicant responded to a request for proposals (RFP) issued by the City of Marlborough's Procurement Office for the lease of city-owned land at the WWTP for the installation of a WCF. The Applicant was later issued a notice of award by the City's Procurement Office and a notice to proceed with the applicable permitting process, including this Special Permit process. Contingent upon issuance of this Special Permit as well as of other permits and approvals required by law, the Applicant will become a tenant of the City of Marlborough under a lease agreement with the City.

The Marlborough City Council is authorized to grant a Special Permit for a WCF at the WWTP, pursuant to the following Articles and Sections of the Marlborough Zoning Ordinance: Article VI, Section 650-25 on WCF; Article VIII, Section 650-59 on Special Permits generally; and Article III, Section 650-17, on allowable uses, which lists WCF as an allowable use under a special permit in the table of uses. The municipal use at the City's WWTP is located in an RR Zone (Rural Residential), and the table of uses lists WCFs as allowed by special permit in the RR Zone.

The Applicant's Special Permit application was received by the City Clerk on March 19, 2009, and was accompanied by other supporting documentation and information, including the required Engineering Plans and Drawings prepared by SFC Engineering Partnership, Manchester, New Hampshire, entitled "Marlborough West" and dated May 7, 2008, with a most recent revision date of February 23, 2010, (the "Engineering Drawings"). The application and support documentation and engineering plans show that the Applicant's WCF is to consist of a 150-foot monopole-type tower, which may be designed to be extendable, as shown on Sheet S-4 of the SFC Engineering Drawings, which will support the antenna/cable equipment of the Applicant and up to four other wireless carriers. The WCF will also include an approximately 50 x 50 foot fenced compound area (approximately 2,500 square feet) enclosing the Applicant's 12 x 30 foot equipment/generator shelter, propane tank and accessory equipment, along with future equipment areas for the other wireless carriers. An area for parking vehicles and for electric and telephone utility equipment is shown on the outside of the fenced compound. The Applicant's WCF is to be located at the rear of the City's WWTP and the Applicant shall install and maintain a twenty-foot wide (20-feet) gravel-covered roadway leading from Boundary Street to the fenced compound, with electric and telephone utilities to be run underground from Boundary Street to the Applicant's WCF.

The City Planner reviewed the Applicant's Special Permit application prior to its filing with the City Clerk, determining that: the application was complete; the application met all information requirements; that no variances were required; and that the application conformed to the special permit rules and regulations.

The Applicant's Special Permit Application was received by the City Clerk on March 19, 2009, and the City Council formally received and acknowledged the application at a public hearing on March 23, 2009, delegating preliminary review of the application to the City Council's Wireless Communications Committee. The application was then formally posted and advertised by the City Clerk, with the required mailing of abutter notices based on a certified assessor list, as required by local and state law, with the first hearing scheduled for May 11, 2009. The hearing was closed with the City Council's decision on the application to be made following a final review by the City Council's Wireless Communications Committee. By written agreement of the Applicant, the time for the

City Council to take final action on the Special Permit application was timely extended several times, most recently to March 31, 2010.

The Applicant held the required balloon visibility study on Monday, May 4<sup>th</sup>, 2009, with the Applicant posting the required newspaper notice and providing additional notice by mail to surrounding residential properties and to the City Council and other City Officials. A second balloon visibility test was held in January 2010, with the Applicant posting the required newspaper notice.

The City Council's Wireless Communications Committee conducted further review of the Applicant's proposed WCF at a meeting held at City Hall on June 9, 2009, June 30, 2009, November 30, 2009, February 9, 2010, and February 23, 2010, prior to its rendering a final recommendation to the full City Council. At its final review meeting on February 23, 2010, the Wireless Communications Committee voted to recommend that the City Council grant the requested zoning relief under the Special Permit.

The City Council, in reviewing the Applicant's special permit application, considered the Review Standards and Development Requirements, as enumerated in Article VI, Section 650-25, and considered the general special permit requirements pursuant to Article VIII, Section 650-59, of the City of Marlborough Zoning Ordinance, as applicable to the Applicant's proposed WCF.

**BASED UPON THE ABOVE, THE MARLBOROUGH CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACTS AND TAKES THE FOLLOWING ACTIONS.**

The Applicant has complied with all of the Rules and Regulations promulgated by the Marlborough City Council pertaining to the Application for a Special Permit for a WCF.

The WWTP Site is an appropriate location for the WCF and the project is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate conditions of this Approval.

The Applicant has complied with the applicable Review Standards and Development Requirements pertaining to WCFs, enumerated in Article VI, Section 650-25, and Article VIII, Section 650-59, of the City of Marlborough Zoning Ordinance, by siting and designing the proposed WCF to minimize any adverse impact of the WCF on nearby properties.

The facility is located in a rear area of the WWTP and is approximately 1,000 from the nearest residential lot line.

There are no existing or previously approved tower structures in the vicinity of the WWTP to accommodate the Applicant's wireless equipment.

The development and use of a wireless communications facility at the WWTP by FCC-licensed wireless telephone carriers will provide a desirable communications service that benefits the safety, convenience and welfare of the residents, businesses, travelers and government users in the City of Marlborough.

There will be a minimal visual impact of the WCF from the neighborhood, streets and residential properties in the vicinity because: a) the facility is in the rear area of the WWTP property which is surrounded by wooded areas; b) the facility is approximately ¼ mile from the nearest residential lot line; c) the height of the WCF monopole shall not exceed 150-feet, but may be designed to be extendable to a higher height if desired by the Applicant upon further prior review and approval by the City Council; and d) the Applicant's balloon-visibility tests indicated that the Applicant's monopole-tower at the proposed location did not appear to be visible from the public roadways throughout the residential areas near the facility and was only partially visible along short segments of Boundary Street and Robin Hill Road.



It is therefore generally found that the Applicant's WCF and its characteristics will have a minimal impact and will not be in conflict with public health, safety, convenience and welfare, and shall not be detrimental or offensive, provided the conditions imposed herein are met.

The final location of the Applicant's WCF is approximately 192 feet due north from the original location presented at the first City Council hearing, and this final location was selected to ensure a safe distance from the WWTP facility. The Applicant has provided an updated viewshed report dated November 24, 2009, prepared by SFC Engineering, and the update indicates that, given the height of the tower is not increasing and given the ground elevation is not changing, the visual impact at the final tower location will be very similar to the impact from the original location. According to the SFC update, the final location is not expected to be visible at any new locations along the public ways accessible to the Applicant. The final location to the north is further away from the nearest residential properties along Boundary Street to the south, and minimizes the impact to the floodplain by maintaining the same ground elevation as the original location, while still maintaining a significant distance from the wetland and riverfront buffer areas to the east and Millham Reservoir to the west. The WWTP is a large tract of wooded land, consisting of 11 acres (Map 76, Lot 1) and 152 acres (Map 76, Lot 2), and bounded on the east by undeveloped land owned by the Commonwealth (Map 64, Lot 5, consisting of 30 acres) and the WCF shall be a significant distance from the nearest residential property (over 1,000 feet), based on the Engineering Drawings, and the final location meets the requirement that that view of the tower from other areas of the City shall be as minimal as possible and shall be screened from abutters and residential neighbors to the extent feasible.

**THE CITY COUNCIL, PURSUANT TO ITS AUTHORITY UNDER MASS. GENERAL LAWS, CHAPTER 40A, AND THE CITY OF MARLBOROUGH ZONING ORDINANCE, GRANTS THE APPLICANT ITS SPECIAL PERMIT SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicants WCF monopole-type tower shall be constructed in substantial conformance with the Engineering Drawings prepared by SFC Engineering Partnership of Manchester, New Hampshire, with a most recent revision date of February 23, 2010, which drawings are made a part hereof.
2. The Applicant's monopole-type tower shall be built to a height of one-hundred-fifty feet (150 feet) and may be designed by the Applicant so that the tower may be made extendable in height for any future expansion and use by the Applicant or other wireless carriers. Any request to extend the height of the monopole-type tower above 150 feet (not including any required grounding or lightning rods or municipal antennas) by the Applicant or any other future users shall require the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.



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3. The Applicant's monopole-type tower shall provide for closely-mounted antenna array systems on the outside of the tower and shall be designed to accommodate the antenna/cable equipment and other related wireless equipment and accessories of the Applicant and at least four other wireless telecommunication service providers, as shown on Sheet S-4 of the Applicant's Engineering Drawings prepared by SFC Engineering and dated February 23, 2010, which are made a part hereof.
4. Pursuant to Article VI, Section 650-25, Subsection E (12), the Applicant's monopole-type tower shall not utilize any flashing lights or strobe lighting.
5. The Applicant's WCF shall be located in the rear of the WWTP as shown on the Applicant's Engineering Plans prepared by SFC Engineering and dated February 23, 2010, which are made a part hereof.
6. Any future expansion of the ground-based WCF fenced-compound by the Applicant or any other users shall require the prior review and approval of the City of Marlborough Department of Public Works and the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
7. Any future users of the monopole-type tower shall require the prior review and approval of the Marlborough City Council pursuant to the special permit process under the Marlborough Zoning Ordinance and any other applicable laws and regulations.
8. The Applicant may maintain and modify the Applicant's wireless equipment on the monopole-type tower as shown on Sheet S-4 of the Engineering Drawings, provided that i) the height of the monopole-type tower is not increased, ii) the tower is structurally satisfactory to accommodate any modified equipment, iii) the modified equipment is similar in appearance to the equipment shown on said Sheet S-4, and iv) the Applicant obtains a building permit for any such modifications.
9. The Applicant's monopole-type tower shall be a grayish color. The walls of the applicant's equipment shelter shall be an earthy-tone, such as gray or tan.
10. All electric and telephone utilities connected to the Applicant's WCF shall be via underground conduits, and the routing and direction of the underground utility conduits shall be within the twenty-foot access road leading from Boundary Street and, further, shall be reviewed and approved by the Site Plan Review Committee which, however, shall retain the discretion, if the Committee deems it appropriate, to authorize the utilities to be connected to the Applicant's WCF via overhead utility pole lines. Any license or easement to be granted by the City to a utility company or companies in conjunction with the utilities referenced in this condition shall have a term not exceeding the term of the lease to be entered into between the City and the Applicant for its WCF authorized under this Special Permit.

/ 4

11. The Applicant's WCF shall comply with all applicable Federal Communication Commission (FCC) regulations, Federal Aviation Administration (FAA) regulations, and any other applicable federal, state or local law, ordinance or regulation.
12. The Applicant shall execute a lease agreement with the City of Marlborough to be drafted by the City Solicitor, approved by the Chief Procurement Officer and executed by the Mayor, and the Applicant shall provide the necessary insurance and indemnification provisions as required by said lease.
13. If the Applicant's monopole-type tower is no longer in use by the Applicant or any other wireless carrier or other user, then the Applicant shall be required to remove the tower within thirty (30) days of such non-use, along with any other WCF equipment, and shall restore the premises to its original condition, except for reasonable wear and tear and below-grade concrete foundations.
14. The Applicant shall post a performance bond from a surety authorized to do business in the Commonwealth of Massachusetts, to ensure removal of the WCF if its use is completely discontinued.
15. The Applicant's lease agreement with the City shall permit the City of Marlborough to have municipal and public safety communication equipment installed by the Applicant, at the Applicant's sole expense, at the top of the Applicant's monopole-type tower, so long as the municipal communication equipment is ready and available for installation at the time when the Applicant is installing the tower and/or other equipment thereon. Such municipal use of the tower i) shall not interfere with the Applicant's current or future use of the monopole-tower and the fenced-compound, ii) shall not be placed between the height levels of 80 and 145 feet without the Applicant's approval, and iii) shall require the municipal entity to notify the Applicant in advance of the manufacturer, dimensions and frequencies of any proposed radio equipment. The lease shall also permit the City of Marlborough to utilize ground space outside the fenced compound at no rental cost to the City.
16. Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough ordinance, prior to the issuance of the actual Building Permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Building Permit and no Occupancy Permit shall be issued until all conditions are complied with by Applicant. Further, any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to this Special Permit, and any non-compliance with said changes, alterations, modifications or amendments shall constitute a violation of this Special Permit. Any other provision of this paragraph notwithstanding:

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- a) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Wireless Communications Committee are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
  - (b) Notwithstanding condition (a) hereof, engineering changes may be made to said plans by the Site Plan Review Committee as long as said changes do not change the use of the Project as approved herein, increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the WCF shown on the plan.
17. As soon as practicable but in any event within one (1) month after the date when a certificate of use and occupancy has been issued to the Applicant by the City of Marlborough's Building Commissioner for the Proposed WCF Project, Applicant shall submit a written report to the City Council; provided, however, that if the Proposed WCF Project has not yet become operational within the one-month period after said issuance date, then the Applicant must immediately provide the City Council with written notification as to the date when the Proposed WCF Project does become operational and, further, must submit said written report within one (1) month after said operational date. The written report to the City Council shall: i) provide measurements as to the actual output of radio frequency energy emitted by the Proposed WCF Project; ii) include a professional opinion by a third party certifying that the Proposed WCF Project fully complies with all applicable radio frequency emission standards promulgated by the Federal Communications Commission ("FCC") and any other applicable health and safety standards; and (iii) provide measurements of the actual output of the total radio frequency energy being emitted by all Wireless Communications Facilities (as defined in Section 650-25 of the Marlborough Zoning Ordinance) then located at the Site. The Applicant agrees to operate its Proposed WCF Project in compliance with all applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards. In the event that there are any changes in or upgrades to the Proposed WCF Project that may increase the actual output of radio frequency energy emitted by the Proposed WCF Project, the Applicant shall submit a letter to the City Council as soon as practicable but in any event within one (1) month after the date of completion of those changes or upgrades. The letter shall: i) state what the changes or upgrades are; (ii) provide measurements specifying how the actual output of radio frequency energy emitted by the Proposed WCF Project has been increased; (iii) provide measurements of the actual output of all radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site; and iv) include a professional opinion by a third party certifying that the Applicant's changes or upgrades have not caused the total radio frequency energy being emitted by all hereinbefore-defined Wireless Communications Facilities then located at the Site to exceed any applicable radio frequency emission standards promulgated by the FCC and any other applicable health and safety standards.

18. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and said recording shall be made before a Building Permit is issued. Upon said recording, Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

End of evidence, findings of facts and decision.

**Yea: 11- Nay: 0**

**Yea: Delano, Ferro, Elder, Juairé, Seymour, Clancy, Landers, Ossing, Pope, Levy & Vigeant**

ORDERED: That the Special Election for the Ward 4 seat to fill the vacancy caused by the unexpected resignation of Councilor Peter Juairé, **APPROVED WITH A JUNE 15, 2010 PRELIMINARY SPECIAL MUNICIPAL ELECTION DATE AND JULY 13, 2010 AS THE SPECIAL MUNICIPAL ELECTION DATE**; adopted.

**MOTION made by Councilor Ferro to remove the Preliminary Election – DOES NOT CARRY**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:15 p.m.; adopted.



*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
Marlborough, Massachusetts 01752  
Tel: (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

*Nancy E. Stevens* 21  
MAYOR

*Krista J. Holmi*  
EXECUTIVE AIDE

*Katherine M. Kimbex*  
EXECUTIVE SECRETARY

March 31, 2010

Arthur G. Vigeant, President  
Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

RE: Department of Public Works Transfer Request Rep/Maint

Honorable President Vigeant and Councilors:

Attached herewith is a transfer request for the Department of Public Works.

Transfer in the amount of \$10,000.00 from account number 14001406-54830 (Fuel & Lubricants) to account number 14001406-54810 (Repair/Maintenance Supplies). The available balance in the Repair/Maintenance Supplies will not be sufficient to meet the fleet maintenance demands for the remainder of this fiscal year.

As always, please feel free to call with any questions or concerns.

Sincerely,

Nancy E. Stevens  
Mayor

Enclosure

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3/31/2010

CITY OF MARLBOROUGH  
BUDGET TRANSFERS --

DEPT:

PUBLIC WORKS

FISCAL YEAR:

2010

FROM ACCOUNT:

TO ACCOUNT:

Available  
Balance

Amount

Org Code Object

Account Description:

Amount

Org Code Object

Account Description:

Available  
Balance

\$81,355

\$10,000.00

14001406

54830

Fuel & Lubricants

\$10,000.00

14001406

54810

Rep/Maint Supplies

\$2,194

Fluctuation in the cost of fuel was less than previous  
fiscal year resulting in surplus in this account.


Additional funding needed to purchase  
supplies and/or repair/service vehicles.

Reason

Reason

Reason:

Department Head signature:

  
3/31/10



APR

*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

*Nancy E. Stevens* 31  
MAYOR

*Krista J. Holmi*  
EXECUTIVE AIDE

*Katherine M. Kimber*  
EXECUTIVE SECRETARY

March 31, 2010

Arthur G. Vigeant, President  
Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

RE: Department of Public Facilities Transfer Requests

Honorable President Vigeant and Councilors:

Attached herewith are multiple transfer requests for the Department of Public Facilities. As noted, the intradepartmental transfers are intended to supplement funding in certain accounts out of other accounts with anticipated surpluses.

Details of each transfer are included in the provided attachment. As always, please feel free to call with any questions or concerns.

Sincerely,

Nancy E. Stevens  
Mayor

Enclosure

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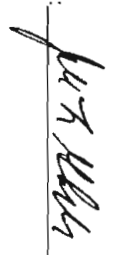
DEPT:

DATE:

CITY OF MARLBOROUGH  
BUDGET TRANSFERS --  
31-Mar-10

FY: 2010

FROM ACCOUNT:				TO ACCOUNT:					
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$53,980	\$1,245.00	11920006	52250	Heating Oil	\$1,245.00	11920003	51920	Sick Leave Buyback	\$1,755
Reason:				surplus due to decrease in cost of oil				Funds needed due to retirement	
\$53,980	\$2,670.00	11920006	52250	Heating Oil	\$2,670	11920003	50560	Custodian	\$51,108
Reason:				surplus due to decrease in cost of oil				Funds needed to cover salary deficit for custodian due to transfer for of account	
\$53,980	\$8,000.00	11920006	52250	Heating oil	\$8,000	11920003	50292	Building Maint Craftsman	\$73,102
Reason:				surplus due to decrease in cost of oil				Funds needed due to retirement	
\$98,475	\$25,000.00	11920006	53420	Telephone services	\$25,000.00	11920006	52466	Fire Station	\$8,511
Reason:				surplus due to credit from Verizon				Funds needed due to renovations of Station 2	
\$856,100	\$25,000.00	11920006	52120	Electricity	\$25,000	11920006	52466	Fire Station	\$8,511
Reason:				surplus due to decrease in costs/usage of electricity				Funds needed due to renovations of Station 2	
\$856,100	\$45,000.00	11920006	52120	Electricity	\$45,000	11920006	53999	Other Services	\$57,999
Reason:				surplus due to decrease in costs/usage of electricity				Funds needed for Walker Building	

Dept Head signature: 

Mayor signature: \_\_\_\_\_





APR - 1

*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
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Tel. (508) 460-3770 Facsimile (508) 460-3698 TDD (508) 460-3610

*Nancy E. Stevens*  
MAYOR

*Krista J. Holmi*  
EXECUTIVE AIDE

*Katherine M. Kimber*  
EXECUTIVE SECRETARY

March 30, 2010

Arthur G. Vigeant, President  
Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

RE: Department of Public Works Transfer Requests

Honorable President Vigeant and Councilors:

Attached herewith are two transfer requests for the Department of Public Works.

Transfer in the amount of \$10,100.00 from account number 60080001-50890 (Sr. Tr. Chemist) to account number 60080006-55660 (Pumping Station Maintenance). This transfer will provide needed funds to cover unanticipated expenses resulting from the extreme rains of March 14 and March 15, 2010. As you are aware, the Governor recently declared a state of emergency in our region. The City anticipates applying for any eligible reimbursement funds.

Transfer in the amount of \$1,200.00 from account number 60080001-50890 (Sr. Tr. Chemist) to account number 60081003-51470 (Interim Foreman). The transfer is necessary to cover DEP staffing requirements during an employee illness.

As always, please feel free to call with any questions or concerns.

Sincerely,

Nancy E. Stevens  
Mayor

Enclosure

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3/30/2010

CITY OF MARLBOROUGH  
BUDGET TRANSFERS -

DEPT: PUBLIC WORKS

FISCAL YEAR: 2010

FROM ACCOUNT:

TO ACCOUNT:

Available  
Balance

Amount

Org Code Object

Account Description:

Amount

Org Code Object

Account Description:

Available  
Balance

\$58,881

\$10,100.00

60080001 50890

Sr. Tr. Chemist

\$10,100.00

60080006 55660

P. S. Maintenance

\$3,276

Reason:

Funds available due to retirement.

Additional funds needed to cover unanticipated  
emergency pumping at Hosmer St and Stearns  
Rd. pump stations from extreme rain storm on  
March 14 & 15

\$58,881

\$1,200.00

60080001 50890

Sr. Tr. Chemist

\$1,200

60081003 51470

Interim Foreman

\$85

Reason:

Funds available due to retirement.

Caused by Chief Operator illness requiring  
filling of position to meet DEP staffing  
requirements.

Reason:

Reason:

Reason:

Reason:

Department Head signature:



3/30/10



*City of Marlborough*  
**Legal Department**

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

*DONALD V. RIDER, JR.*  
CITY SOLICITOR

*CYNTHIA M. PANAGORE GRIFFIN*  
ASSISTANT CITY SOLICITOR

*BEVERLY J. SLEEPER*  
CHIEF PROCUREMENT OFFICER

*DENISE M. LINDBERG*  
PARALEGAL

April 1, 2010

Arthur Vigeant  
President  
Marlborough City Council  
140 Main Street  
Marlborough, MA 01752

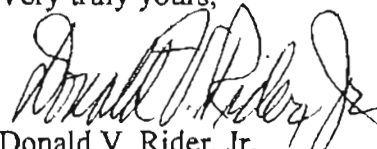
RE: Order No. 09/10-1002361  
Special Permit Application  
JAM Enterprises, LLC  
Sonic Restaurant

Dear President Vigeant and Members:

Pursuant to Chapter 650-59C(13) of the Marlborough Zoning Ordinance, I provide this letter as to the legal form of the City Council's proposed findings on the special permit application submitted by JAM Enterprises, LLC for a Sonic Restaurant proposed for an address to be known and numbered as 230 Boston Post Road West. The application seeks a special permit for a drive-through facility.

I have enclosed a copy of the proposed decision, which includes the condition approved by the Council at its March 22, 2010 meeting regarding a job fair for Marlborough residents. I certify that the proposed decision is in proper legal form.

Very truly yours,

  
Donald V. Rider, Jr.  
City Solicitor

Enclosure

cc: Donald L. Conn, Jr., Esquire

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**DECISION  
GRANT OF SPECIAL PERMIT**

In City Council  
Order No. 09/10-1002361

Application of:  
JAM Enterprises, LLC  
7 Ashley Court  
Lynnfield, MA

Locus:  
To be known and numbered as 230 Boston Post Road West.  
To be shown on the Marlborough Assessor's Maps as Map 89, Parcel 77A.

**DECISION**

The City Council of the City of Marlborough hereby **GRANTS** the Application of JAM Enterprises, LLC as provided in the DECISION and subject to the following FINDINGS OF FACT AND CONDITIONS.

Decision filed: \_\_\_\_\_

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on \_\_\_\_\_.

**APPEALS**

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be file within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

ATTEST:

City Clerk

**ORDERED:**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to JAM Enterprises, LLC, 7 Ashley Court, Lynnfield, MA for a restaurant with drive-through facilities, in connection with a proposed stand-alone restaurant, as provided in this Decision and subject to the following Findings of Facts, Rulings and Conditions.

**FINDINGS OF FACT**

1. JAM Enterprises, LLC is hereinafter referred to as "Applicant."

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2. Applicant is a party to a contract calling for the acquisition of the premises to be known and numbered as 230 Boston Post Road West, Marlborough, Massachusetts containing 1.19 acres +- and to be shown on the Marlborough Assessor's Maps as Map 89, Parcel 77A, as further described by the metes and bounds shown on a conceptual site plan ("the Plan") numbered "CPT4" and entitled "Conceptual Site Plan, Proposed Sonic, Boston Post Road, Marlborough, Mass.," drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, scale 1"=20', dated October 19, 2009, last revised March 16, 2010, and consisting of one page (hereinafter the "Site"). Applicant proposes to construct a stand-alone restaurant facility with drive-through on the Site ("the Project").
3. Applicant, by and through its attorney, Donald L. Conn, Jr., has filed with the City Clerk of the City of Marlborough an application for Special Permit ("Special Permit Application" or "Application"). Pursuant to Section 200, ¶ 14(B) of the Zoning Ordinance of the City of Marlborough (2008 Code), Applicant is seeking permission for the drive-through facility.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Special Permit Application, Applicant has submitted a document entitled, "Traffic Information, Proposed Sonic Drive-Through Restaurant, Boston Post Road (Route 20), Marlborough, Massachusetts" submitted by Hayes Engineering, a certified list of abutters, filing fees, and a conceptual site plan numbered "CPT4" and entitled "Conceptual Site Plan, Proposed Sonic, Boston Post Road, Marlborough, Mass.," drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, scale 1"=20', dated October 19, 2009, last revised March 16, 2010, and consisting of one page.
6. The site plan was certified by the City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for public hearing on the application for a Special Permit and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
8. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, held a public hearing on the Application on January 11, 2010.
9. Applicant presented testimony at the public hearing detailing the application, describing its impact upon municipal services, the neighborhood, and traffic.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING  
RULINGS:**

A. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Chapter 200 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A, Sections 9 and 11.

B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or of Massachusetts General Laws c. 40A.

C. The City Council finds that the proposed use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided hereinafter. The City Council makes these findings subject to the completion and adherence by Applicant, its affiliates, successors and/or assigns to the conditions more fully set forth hereinafter.

D. The City Council, pursuant its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough, hereby GRANTS Applicant a Special Permit to construct and operate drive-through restaurant services as shown on the Plan filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding upon Applicant, its affiliates, successors and/or assigns:

1. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and Commonwealth of Massachusetts and shall be built consistent with the Plan.
2. The issuance of the Special Permit is further subject to detailed technical Site Plan Review in accordance with Chapter 270 of the City of Marlborough Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to this Special Permit, and any violations of such Site Plan Review conditions shall be violations of this Special Permit leading to its possible revocation by the City Council. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plan submitted, reviewed and approved by the City Council as the special permit granting authority. Any changes to the Plan which alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.
3. Applicant agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of Applicant's facility.

- a. Without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Massachusetts Environmental Policy Act ("MEPA") as determined by the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EEA"). Any changes, alterations, modifications or amendments required in order to conform with MEPA as determined by EEA shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
  - b. Likewise without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Commonwealth of Massachusetts Department of Transportation ("MassDOT"). Any changes, alterations, modifications or amendments required in order to conform with MassDOT shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
4. The locations and design of signage shall be reviewed and approved during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid any conflicts with existing City infrastructure.
5. The location and placement of pavement markings and traffic directional signage, and all other traffic-related issues, shall be reviewed and approved during Site Plan Review in accordance with the applicable rules and regulations of the City of Marlborough.
6. All illuminations of individual parking lot light fixtures shall not exceed 200-watt fixtures. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.
7. Snow storage and removal is to be maintained and conducted on-Site by Applicant, its affiliates, successors and/or assigns in accordance with the requirements of Site Plan Review. Applicant, its affiliates, successors and/or assigns shall provide off-Site snow removal as required and if deemed necessary by the City of Marlborough Commissioner of Public Works.
8. There shall be no overnight parking at the Site.
9. All catch basins shall be installed in accordance with plans to be reviewed and approved at Site Plan Review. The catch basins shall be monitored by Applicant, its affiliates, successors and/or assigns on a semi-annual basis with reports given

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to the City Engineer annually. The catch basins are to be cleaned by Applicant, its affiliates, successors and/or assigns annually, or at more frequent intervals as determined necessary by the City Engineer.

10. Applicant, its affiliates, successors and/or assigns agrees to plant and maintain the Project landscaping as shown on plans to be reviewed and approved at Site Plan Review.
11. The drive-through window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system and with full compliance with the noise ordinance of the City of Marlborough. The drive-through audio speakers also shall not produce noise at the Site's property line greater than that which would be allowed at the Site's property line in accordance with the noise ordinance of the City of Marlborough.
12. Applicant, its affiliates, successors and/or assigns agrees to screen the Project's trash area. Applicant, its affiliates, successors and/or assigns further agrees that the dumpsters located on Site will be covered. No trash pickup shall occur weekdays before 7:00 AM or after 6:00 PM or at any time during weekends.
13. Applicant, its affiliates, successors and/or assigns agrees that the Site will be subject to City Council review of the traffic configuration after one-year from the issuance of the Occupancy Permit to determine whether any alterations need to be made to the entrances and egresses to the Site to accommodate traffic flow and ensure public safety and agrees to make changes in compliance with the recommendations of the Marlborough Department of Public Works, the Marlborough Police Department and the Marlborough Traffic Commission.
14.
  - a. All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of this Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
  - b. Notwithstanding condition a. hereof, engineering changes may be made to said plans by the Site Plan Review Committee so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the building shown on the plan.
15. In connection with all improvement work within public right-of-ways which requires a street opening permit, the City Engineer shall be provided by Applicant, its affiliates, successors and/or assigns with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant, its affiliates, successors and/or assigns, and not the City of Marlborough, will bear



the costs of any police detail for any work performed within or associated with the public way.

16. Parking areas will be swept and maintained by Applicant, its affiliates, successors and/or assigns as necessary. Pursuant to the provisions of Massachusetts General Laws Chapter 90, § 18, Applicant, its affiliates, successors and/or assigns shall submit, sixty (60) days prior to occupancy of the Project, a written request and grant of authority to the Marlborough Traffic Commission ("the Commission") to promulgate legally enforceable rules and regulations for the control of on-Site and off-Site traffic parking. Applicant, its affiliates, successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices.
17.
  - a. The hours of operation for the drive-through operation at the Site shall not exceed the following times: Monday through Sunday, 6 A.M. to 2 A.M.
  - b. The City Council, after one (1) year from the date when the drive-through commences operations, may review and amend the hours of operation for the drive-through.
18. Applicant, its affiliates, successors and/or assigns shall be required to hire a site engineer(s) who shall be competent in stormwater and erosion control management. This credentials of this individual(s) shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's stormwater regulations and the City's stormwater ordinance. This individual(s) shall ensure compliance with the sequence-of-construction plan and the erosion control plan to be reviewed and approved by the Site Plan Review Committee, and, if applicable, with the Order of Conditions issued by the Conservation Commission. The Applicant, its affiliates, successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.
19. If the drainage system (during construction and post-construction) constructed by Applicant, its affiliates, successors and/or assigns fails and the failure is the cause of damage to another's property, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of said damaged property the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
20. As it is anticipated that Applicant, its affiliates, successors and/or assigns will need to conduct blasting operations during construction at the Site, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of any

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property damaged by said blasting the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.

21. As it is anticipated that the initial opening of the restaurant will generate higher traffic volumes than during normal operations, Applicant, its affiliates, successors and/or assigns shall meet with the Chief of Police or his designee, the Building Inspector and the Planning Director ("the City traffic officials") at least one (1) month prior to said initial opening in order to review the opening plans for the restaurant, and said plans must be approved in advance by the City traffic officials in order for the restaurant to conduct its initial opening. During the period of its initial opening, Applicant, its affiliates, successors and/or assigns, at its sole expense, must obtain a police detail adequate to maintain safe traffic flow eastbound and westbound on Route 20 during peak periods. Until normal traffic has resumed as determined by the City traffic officials, Applicant, its affiliates, successors and/or assigns must continue to meet with them, at such times as the City traffic officials determine, in order to assess the traffic volumes and associated traffic safety at the Site.
22. This Special Permit is dependent upon the Applicant, its affiliates, successors and/or assigns, reaching agreement with Marlborough/Northborough Land Realty Trust and/or with The Gutierrez Company, its affiliates, successors and/or assigns, for all cross-easements or other permissions necessary for access and infrastructure associated with the Site. If such agreement(s) is/are not reached, this Special Permit shall lapse forthwith.
23. Applicant, its affiliates, successors and/or assigns shall pay to the City of Marlborough an administrative review fee in the amount of \$5000.00 as mitigation of the time devoted by the Building Inspector, the City Engineer and the City Solicitor in resolving issues associated with the Special Permit Application, including those involving zoning, traffic and the drafting of the decision itself which the Zoning Ordinance expressly dictates is placed upon the applicant for a special permit. Said payment shall be made before a Building Permit is issued.
24. Applicant, its affiliates, successors and/or assigns, agrees to conduct a so-called "Job Fair" prior to the grand opening of the Project. Applicant, its affiliates, successors and/or assigns shall coordinate such Job Fair, to the extent feasible, with Marlborough schools and local or regional governmental employment agencies so that Marlborough residents are provided with adequate notice of employment opportunities at the Project. In addition, Applicant, its affiliates, successors and/or assigns shall coordinate a like Job Fair for Marlborough contractors for site- and building-related improvements at the Project, and shall encourage its own contractors to hire Marlborough construction workers for the Project.

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25. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its affiliates, successors and/or assigns at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before a Building Permit is issued. Applicant, its affiliates, successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

**Yea:**      **Nay:**  
**Abstain:**

ADOPTED  
In City Council  
Order No. 09/10-1002361

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Signed by City Council President

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**Thomas, Lisa**

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**From:** Panagore Griffin, Cynthia  
**Sent:** Thursday, April 01, 2010 3:24 PM  
**To:** Thomas, Lisa  
**Cc:** Steven Levy; David Gadbois; Rider, Donald; City Council  
**Subject:** 04-01-10 Rink Revised Special Permit  
**Attachments:** CPG DPG CLIENT edits 04-01-10 Rink Revised Special Permit (2).doc

Lisa:

Please include the attached on the City Council's agenda for the Monday night, April 5, 2010. Councilor Levy asked me to send it to you.

Cynthia

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**IN CITY COUNCIL**

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**ORDERED:**

**Marlborough, Mass., \_\_\_\_\_ 2010**

**DECISION ON AN APPLICATION TO AMEND**  
**SPECIAL PERMIT # 94-5460B AS PREVIOUSLY AMENDED BY CITY COUNCIL**  
**ORDER NO. 04-100359 ON MAY 10, 2004**

The City Council of the City of Marlborough hereby Grants the Application for Amendment to Special Permit # 94-5460B as previously amended by City Council Order # 04-100359 to Quad Rink Limited Partnership/New England Sports Management Corporation, General Partner, 84 South Street, Carlisle, MA 01741 and H. Larue Renfroe, Trustee of Donald Lynch Boulevard Realty Trust u/d/t dated December 23, 1994 recorded in the Middlesex South District Registry of Deeds in Book 25093 Page 467, both having a place of business at 84 South Street, Carlisle, MA 01741 as provided in the Decision and subject to the following Procedural Findings, Findings of Facts and Conditions:

**PROCEDURAL FINDINGS**

1. New England Sports Management Corporation, General Partner of Quad Rink Limited Partnership, and H. Larue Renfroe, Trustee of Donald Lynch Boulevard Realty Trust u/d/t dated December 23, 1994 each having a place of business at 84 South Street, Carlisle, MA 01741 are hereinafter collectively referred to as the "Applicant."
2. H. Larue Renfroe, Trustee of Donald Lynch Boulevard Realty Trust, is the owner of property located at 121 Donald Lynch Boulevard as well as certain contiguous land in the Town of Hudson (hereinafter referred to as the "Site"). Said property is further described in a deed recorded in the Middlesex South District Registry of Deeds in Book 24458 Page 324.
3. The Applicant, on or about February 4, 2010, filed with the City Clerk of the City of Marlborough an Application for Amendment to Special Permit # 94-5460B, herein referred to as the "Application."
4. On May 23, 1994 the City Council granted the Applicant a Special Permit to construct a multi-sport facility consisting of up to four major activity areas. The activity areas are known as "rinks." Notice of Grant of Special Permit # 94-5460B

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is recorded in the Middlesex South District Registry of Deeds in Book 25042 Page 572. Said Special Permit (hereinafter referred to as "Special Permit") was amended on May 10, 2004 by City Council Order No. 04-100359. The amended Special Permit herein after will be referred to as "Amended Special Permit." Notice of the Amended Special Permit was recorded in the Middlesex South District Registry of Deeds in Book 43009 Pages 25.

5. The Application is authorized under the provisions of Chapter 650 (Zoning) of the Code of the City of Marlborough, Article V Section 650-17 Table of Uses and 18 Conditions for Uses A (23) Recreation Centers. The reason for the Application is to amend the Amended Special Permit to allow the construction and use of an additional sixth rink at 121 Donald Lynch Boulevard (the Project) to be used under the provisions of the Amended Special Permit as further amended hereby.
6. The Application filed with the City Clerk on February 4, 2010 consisted of the following: (a) Application Fee in the amount of \$500.00; (b) 3 (three) original copies of the Application for Amendment to Special Permit # 94-5460B; (c) Certification of Delivery of copies of application to City of Marlborough Departments and Office of the City Council; (d) Certification of Payment of Municipal Taxes; (e) Preliminary Site Plans in accordance with Chapter 650 Article VIII Section 650-59 Paragraph C. (5); (f) Application outlining the project; (g) Special Permit Application Certification by Planning Department; (h) Certified copies of Abutters' Lists for the City of Marlborough and the Town of Hudson; (i) Special Permit-Summary Impact Statement; (collectively the "Documents"). Twelve sets of Documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner, the Building Inspector, the City Engineer and the Conservation Officer, all in accordance with Chapter 650, Article VII Section 200-59 of the Zoning Code of the City of Marlborough. The documents are incorporated herein and become part of this Decision.
7. The Applicant filed with the Application a Certificate of Completeness of Application on a form signed by the City Planner for the City of Marlborough as having complied with the provisions of Chapter 650 (Zoning Code) Article VII Section 650-59, C. (7) (a), (b), and (c).
8. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A Sections 9 and 11, the City Council established March 8, 2010 at 8:00 PM as a date and time for a public hearing on the Application, caused a notice of said hearing and the date thereof to be advertised on February 16<sup>th</sup> and 23<sup>rd</sup> in the Metrowest Daily News and caused said notice to be mailed to those entitled thereto. Proof of advertisement and mailing has been submitted to the City Clerk to be placed with the Application documents.
9. The Marlborough City Council held a public hearing on the Application on March 8, 2010 at 8:00 PM in accordance with the published notice, (the Public Hearing). The hearing was opened and closed on said date.
10. The Applicant presented a parking and traffic analysis and testimony at the Public Hearing detailing the construction and use of a sixth major activities area (Project), its

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impact upon municipal services, the neighborhood traffic, parking, drainage and such issues as the City Council and members of the public deemed appropriate. Members of the public had the opportunity to testify at the public hearing. Some members of the public spoke in favor of the project, some spoke against, some had questions, and some commented without stating a position for or against the project.

11. The Applicant provided written and oral documentation and testimony to the City Council and the City Council's Urban Affairs Committee regarding the development of the Site, the drainage, traffic, parking, safety considerations during and after construction, affect on nearby wetlands water and sewer use, the design and construction of the sixth rink to include operational considerations during and after construction, handicap accessible issues, the economic impact on the community, impacts on the abutter to the east of the project, and mitigation of impacts.

**BASED UPON THE ABOVE THE CITY COUNCIL OF THE CITY OF MARLBOROUGH MAKES THE FOLLOWING FINDINGS AND CONDITIONS:**

- A. The City Council finds that it may amend Special Permit # 94-5460B as previously amended (Amended Special Permit) subject to terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough.
- B. The City Council finds the Application for Amendment to Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough or Massachusetts General Laws Chapter 40A, et. seq.
- C. The City Council finds that the proposed use of the Site for the Project is an appropriate use and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough. The construction of the Project will compliment the existing business uses in the City of Marlborough and surrounding communities, and will enhance the development goals of the City and the region by providing additional services, increased employment opportunities, increased recreational opportunities, positive impact on the hospitality resources of the City, and a continuation and expansion of a positive asset to the City of Marlborough.
- D. The Site Plan, as submitted and as may be amended by the Site Plan Review Committee during the site plan review process, provides for improvements which will protect the environment, and not have adverse impacts to the community. Those improvements are drainage, lighting, and better control of trash and litter. The City Council makes this determination subject to the completion and adherence by the Applicant to the approved site plan by the Site Plan Review Committee, an order of conditions as may be issued by the City of Marlborough Conservation Commission, and the conditions more fully set forth herein.

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- E. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough, Chapter 650 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A Sections 9 and 11.

### **GRANT OF AMENDMENT TO SPECIAL PERMIT**

- F. The City Council of the City of Marlborough pursuant to its authority under Chapter 650 (Zoning Code) of the Code of the City of Marlborough and Massachusetts General Laws Chapter 40A, GRANTS to the Applicant an Amendment to Special Permit # 94-5460B to construct a sixth rink to be used as a multi-sport facility as set forth in the Amended Special Permit, in the Application, and as per the plans submitted to the City Council, and subject to the following conditions:
1. The Amended Special Permit # 94-5460B is hereby affirmed, is deemed to be in full force and effect and applies to the Project without change or modification, except as provided for in the Application, the Site Plans and other conditions herein stated.
  2. Unless modified by the provisions hereof, all conditions outlined in Paragraph 4. (a) through (z) of the Special Permit and conditions 3 through 11 of the Amended Special Permit shall apply to the Project. Where reference is made to the issuance of the Special Permit, it shall also refer to the issuance of the Amended Special Permit.
  3. **Construction of the Project:** (a) Construction of the project is subject to the same conditions and limitations as provided in Condition 4. (a) of the Special Permit, except that reference is made to the site plan dated January 21, 2010 and revised on February 4, 2010 and March 22, 2010 and prepared by GLM Engineering Consultants, Inc., which site plan was filed with the Application. (b) The construction site will be fenced as approved by Site Plan Review. (c) To ensure the safety of patrons, employees and the general public during all phases of the construction of the Project, the Applicant will develop a modified emergency exit plan during site plan review and implement the same as a condition hereof. (d) Applicant shall, prior to issuance of the building permit for the project, provide a payment to the City of Marlborough Inspectional Services Fund in the amount of five thousand (\$5,000.00) dollars to offset the increases in costs associated with the Project. The City shall expend said funds as needed to contract for temporary staff, materials, supplies and equipment so as to enable the Inspections Staff to provide adequate, timely supervision to the Project.
  4. **Parking Areas:** Four hundred ninety (490) parking spaces shall be provided as shown on the Site Plan.



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5. **Lighting for Parking Lots:** (a) Exterior parking lot lighting shall not spill onto abutting residential property. (b) Reflectors shall be utilized and configured to mitigate light from entering abutting residential property. (c) Exterior parking lot lighting shall be extinguished each day no later than 1:00 A.M. local time, except for any security lighting required by the Marlborough Police Department.
  6. **Project Plans and Specifications:** (a) The Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process before the City Council and/or the Urban Affairs Committee, and in compliance with the Conditions of the Grant of Special Permit and Amended Special Permit. (b) All Plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. (c) Notwithstanding condition (a) and (b) hereof, engineering changes may be made to said plans by the Site Plan Review Committee so long as said changes do not change the use of the Site as approved herein, increase the impervious area of the Site, reduce the green area or increase the size of the building shown on the plan.
  7. **Planting of Additional Vegetation:** In order to mitigate the amount of light going on to the abutting residential property from vehicles using the parking lot, Applicant shall plant a sufficient amount of coniferous trees and evergreen shrubs to block the light from hitting the nearby house and to catch any debris or litter that might blow from the parking lot towards the said residential property. Said plantings will be placed at the crest and on the slope of the hill. Applicant will replace existing damaged trees and shrubs. All plantings will be approved by the Site Plan Review Committee, including but not limited to species, location and quantity, during the site plan review process. Applicant will maintain said plantings for the life of the Special Permit.
  8. **Granite Curbing:** In order to provide a stop for vehicles parking in the east parking lot, Applicant will install vertical granite curbing, with no less than a 6 inch reveal, along the east side of the site.
  9. **Parking of Buses:** When there are more than three buses at one time utilizing Applicant's parking facilities, they shall park in the off-site parking facilities provided by the Applicant.
  10. **Formal Parking and Pedestrian Movement Plan:** (a) Applicant will submit to the Site Plan Review Committee for its review and approval a formal Parking and Pedestrian Movement Plan to be used during major events when off-site parking is utilized. Said plan shall be updated as

conditions warrant such an update. (b) Applicant will provide off-site parking sufficient to accommodate overflow parking.

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11. **Review of Parking and Traffic:** Twelve months following the opening of Rink 6, Applicant will return to the Site Plan Review Committee to review the parking and traffic considerations. If the Site Plan Review Committee determines a need to adjust the parking and traffic considerations, Applicant will submit an amended site plan for approval of the Site Plan Review Committee.
12. **Scheduling of Tournament Games:** When games with high spectator interest are played, the schedule of games will be at least forty minutes apart to minimize parking and traffic congestion.
13. **Walkways:** Applicant will construct a sidewalk starting from the end of the current sidewalk at the front entrance to the Site at Donald Lynch Boulevard and extending to the driveway. Applicant will mark a cross walk across the driveway to the front lawn in front of the building. Applicant will also construct a walkway across the lawn to the current, marked cross walk which leads to the building.
14. **Handicap Accessibility:** In addition to fulfilling its obligations to provide handicapped accessibility as required under state and federal law, the Applicant will also provide handicapped accessibility to and within facilities and spaces associated with Rink 6 which will be accessed by the public, including its locker rooms.
15. **Exterior Camera and Signage:** Applicant will install a security camera with recording capabilities on the east side of Rink 6 for the purpose of observing and recording activities which take place in the east parking lot. Applicant will also install signage at the east parking lot which prohibits loitering.
16. **Exterior Property Maintenance:** In modification of the condition stated in Paragraph 4. (u)(ii) of the Special Permit, the Applicant will inspect the entire Site on a daily basis, pick up any litter thereon, and appropriately discard the same. At the end of the business day, Applicant will visually inspect the entire Site to ensure that all employees and patrons have left the parking areas.
17. **Detention Basin:** In modification of the condition stated in Paragraph 4. (e) of the Special Permit, Applicant will inspect the on-site detention basin not less than annually with respect to sedimentation accumulation, and will expeditiously give copies of the annual report(s) to the City Engineer and Conservation Officer. To the same extent, if such reports indicate the need for sediment removal, the Applicant shall remove the same.
18. **Catch Basin:** In modification of the condition stated in Paragraph 4. (f) of the Special Permit, the Applicant will install the catch basin with sumps

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and inverted outlets as more fully shown on the Site Plan. The Applicant will monitor the catch basin on a semi-annual basis, and will expeditiously give copies of the semi-annual reports to the City Engineer. The Applicant will clean the catch basin annually, or at more frequent intervals as determined by the City Engineer.

19. **Signage:** The locations and design of any new signage shall be reviewed and approved during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid any conflicts with existing City infrastructure.
20. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and said recording shall be made before a Building Permit is issued. Upon said recording, Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.
21. The issuance of the Special Permit is further subject to detailed technical Site Plan Review in accordance with Chapter 270 of the City of Marlborough Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review shall be further conditions attached to this Special Permit, and any violations of such Site Plan Review conditions shall be violations of this Special Permit leading to its possible revocation by the City Council. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plan submitted, reviewed and approved by the City Council as the special permit granting authority. Any changes to the Plan which alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.

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Yea Votes: \_\_\_\_ - Nay Votes: \_\_\_\_ - Absent: \_\_\_\_ - Abstain Votes: \_\_\_\_

Yea:

Nay:

Absent:

Abstain:

ADOPTED  
In City Council  
Order No. 05-100359

A TRUE COPY

ATTEST: \_\_\_\_\_  
City Clerk



**DAVID P. GADBOIS**  
*Attorney-at-Law*  
27 PROSPECT STREET  
MARLBOROUGH, MASSACHUSETTS 01752

PHONE (508) 481-0101

E-MAIL David@attygadbois.com

FAX (508) 485-8506

April 1, 2010

Ms. Lisa M. Thomas, City Clerk  
City Hall 140 Main Street  
Marlborough, MA 01752

RE: Petition of The Gutierrez Company.  
For a Zoning Change

Dear Ms. Thomas:

Enclosed herewith please find Petition for a Zoning Change to the Zoning Map from The Gutierrez Company on behalf of Marlborough/Northborough Land Realty Trust, owner of the subject property. Please forward this matter to the City Council and place it on its agenda for the meeting of Monday April 5, 2010.

If you have any questions, please contact me at your convenience.

Very truly yours,

Atty. David P. Gadbois

Encl: Petition 15 sets

7  
2

DAVID P. GADBOIS  
*Attorney-at-Law*  
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FAX (508) 485-8506

President and Members  
Marlborough City Council  
City Hall 140 Main Street  
Marlborough, MA 01752

April 1, 2010

RE: Petition for Amendment  
To Zoning Code by  
Amending Zoning Map

Dear President and Members:

I represent Marlborough/Northborough Land Realty Trust (herein after referred to as Petitioner) managed by The Gutierrez Company, owner of all of the land which is the subject matter of this Petition. The said land is part of City of Marlborough Assessor's Map Map 78 Parcels 12, 38 and 39 and Map 89 Parcel 77. My client hereby petitions the City Council to amend the "Zoning Code of the City of Marlborough Chapter 650 Article III Establishment of Districts Section 650-8 Boundaries Established; Zoning Map" by extending the Business District along Route 20 West in accordance with the attached proposed change.

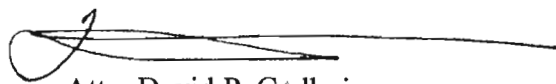
The first 300 foot depth of the subject parcels currently lie within the Business District. The land, which is the subject of the rezoning, is currently zoned Limited Industrial and is located south of route 20, west of Glen Street and East of Ames Street. It is the intent to have the entirety of the subject parcels placed in the Business District.

Attached hereto as Exhibit "A" is the proposed change to the Zoning Ordinance Map. During the public hearing, I will explain the reasons for the requested change. The Petitioner believes the amended Zoning Map will provide a reasonable vehicle for the development of the parcels of land being the subject matter of the request.

Please schedule a public hearing on the Petition, publish notice as provided for in Massachusetts General Laws Chapter 40A Section 5, give written notice as provided for therein and request a recommendation from the Planning Board.

If you have any questions, please feel free to contact me at your convenience.

Very truly yours,



Atty. David P. Gadbois  
Attorney for Petitioner  
Encl: Proposed Ordinance Change

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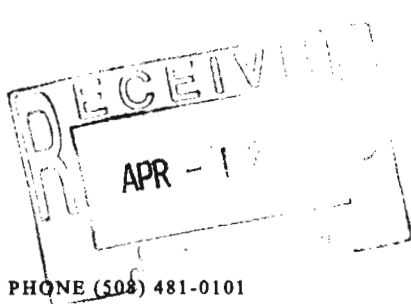
**EXHIBIT A**  
**IN CITY COUNCIL**  

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**Marlborough, Mass., \_\_\_\_\_ 2010**

**Order No. 10-\_\_\_\_\_**  
**Zoning Map Change**  
**Map 78 Parcels 12, 38 and 12**  
**Map 87 Parcel 77**

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended be further amended by amending the Zoning Map established by Chapter 650 Zoning Article III Establishment of Districts Section 650-8 "Boundaries Established; Zoning Map". Said map is amended by extending the Business District shown on the City of Marlborough Massachusetts Zoning Map by including in said Business District all of Map 78-Parcels 12, 38, and 39 and Map 89 Parcel 77 of the City of Marlborough Massachusetts Assessor's Map



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81

March 31, 2010

City Clerk  
City Hall 140 Main Street  
Marlborough, MA 01752

RE: Sewer Connection Permit  
Devonshire at 495 Center

Dear Clerk:

Enclosed please find a request to the City Council for an extension of a Sewer Connection Permit granted to my client in 2001 (Order No. 01-9039) and extended in 2008 (Order No. 08-1001834A. Please place this request on the City Council Agenda for its April 5<sup>th</sup> meeting.

Thanking you for your anticipated cooperation and attention to this matter, I am

Very truly yours,

Atty. David P. Gadbois  
Attorney for the Gutierrez Company



82

**DAVID P. GADBOIS**  
*Attorney-at-Law*  
27 PROSPECT STREET  
MARLBOROUGH, MASSACHUSETTS 01752

PHONE (508) 481-0101

E-MAIL David@attygadbois.com

FAX (508) 485-8506

March 31, 2010

President and Members  
Marlborough City Council  
City Hall 140 Main Street  
Marlborough, MA 01752

RE: Sewer Connection Permit  
Devonshire at 495 Center  
Request for Extension

Dear President and Councilors:

I represent The Gutierrez Company agent for Marlborough/Northborough Land Realty Trust owner of the property known as Devonshire at 495 Center located between Forest Street and Hayes Memorial Drive. In the Spring of 2001 the City Council approved the issuance of a Sewer Connection Permit for 36,000 gallons of sewer capacity and another 20,000 gallons when the capacity became available at the Westerly Waste Water Treatment Plant, conditioned on the Applicant funding an I&I study of the sewer system serving the said treatment plant. The study took a number of years to complete.

The Gutierrez Company paid for the said study spending more than \$275,000.00. The study was performed by Camp Dresser & McKee Inc. A report was given to the City. The report has been the basis for correcting infiltration of non-sewer flows into the system thereby providing more plant capacity for legitimate sewage processing. On October 2, 2008 the Mayor approved City Council Order # 08-1001834A extending the Permit for 18 months.

My client had some inquiries for the development of the property. It continues to aggressively market the property, however without an extension of the Sewer Connection Permit, it cannot have meaningful discussions with the prospective users. My client hereby requests the City Council approve an extension of the term of the permit for an additional 18 months.

Respectfully submitted  
The Gutierrez Company  
by its attorney



Attorney David P. Gadbois

83

DAVID P. GADBOIS  
*Attorney-at-Law*  
27 PROSPECT STREET  
MARLBOROUGH, MASSACHUSETTS 01752

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March 31, 2010

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Marlborough City Council  
City Hall 140 Main Street  
Marlborough, MA 01752

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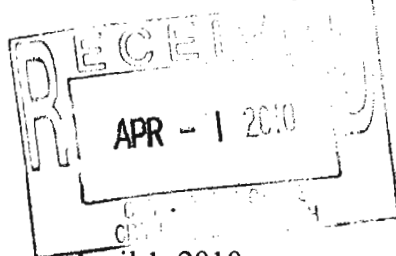
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Respectfully submitted  
The Gutierrez Company  
by its attorney

  
Attorney David P. Gadbois

# MIRICK O'CONNELL

ATTORNEYS AT LAW



April 1, 2010

9

**Arthur P. Bergeron**  
Mirick O'Connell  
100 Front Street  
Worcester, MA 01608-1477  
abergeron@mirickoconnell.com  
t 508.929.1652  
f 508.463.1385

Councilor Arthur Vigeant, President  
Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

Re: Toll Brothers, Country Club Estates

Dear Councilor Vigeant:

Several years ago, Toll Brothers completed the construction and sale of the homes at Country Club Estates, a previously approved subdivision that included a number of new homes on Stow Road. As part of the terms of the subdivision approval, several of the lot owners were to convey property to the City to allow the City to increase the size of its right-of-way. Toll Brothers has completed the process of obtaining all the deeds to all the areas that, in the opinion of the City Engineer, are necessary in order to assure that the City can maintain its existing roadway. Before these deeds can be recorded, however, the City Council would need to approve the adjustment of the boundary of the right-of-way so as to include the new land being conveyed. Otherwise, the existing property owners would end up without legal frontage on Stow Road. I would appreciate your referring this matter to the Urban Affairs Committee, so that my client and the City Engineer can review this matter in more detail.

Very truly yours,

Arthur P. Bergeron

APB/lmb

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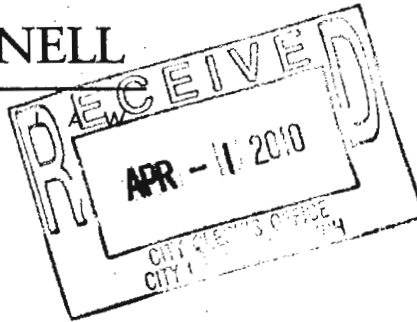
MIRICK, O'CONNELL, DeMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

# MIRICK O'CONNELL

ATTORNEYS AT



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f 508.462.1385

April 1, 2010

Councilor Arthur Vigeant, President  
Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

Re: Proposed Zoning Change

Dear Councilor Vigeant:

My client, Moss Development, has entered into an agreement to purchase the so-called Rawchuck land, a set of parcels containing a total of over 88 acres. Bob Moss, the principal, would like to cluster the proposed single-family homes on the site in a way that would preserve over half of it as open space. However, in order for him to request a special permit from the Planning Board to do that, the existing Open Space Subdivision provision of the zoning ordinance would need to be changed to allow individual homes to be built on smaller lots than are now permitted.

Pursuant to Mass., General Laws Chapter 40A §5, my client, and the current landowners, Anna Maruca and Anita Nestor, the trustees of the trust that now owns all the Rawchuck land, hereby request that the Marlborough City Council amend the Marlborough Zoning Ordinance as provided in the language attached hereto as Attachment #1.

I would appreciate scheduling this matter for a public hearing at your next meeting on April 26, 2010, and forward the matter to the Planning Board so that they can schedule a hearing of their own.

Very truly yours,

Arthur P. Bergeron

APB:sd  
Enclosure  
cc: Robert Moss

---

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

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www.mirickoconnell.com

**ATTACHMENT #1**

That Chapter 650 of the Code of the City of Marlborough, as most recently amended, be further amended by adding, in the Table of Lot Area and Yard Requirements for Open Space Development that is part of section 650-28.E(3), after the words "Lot area (square feet)", a Note, the said Note to read as follows:

"For Open Space Developments of more than 50 acres, the required Lot area may be reduced by as much as 50%, but not below 8,000 square feet per lot, provided that, in that case, the Common Open Space required pursuant to Sec. 650-28.F(6) shall be not less than 50% of the total site."

# MIRICK O'CONNELL

A T T O R N E Y S   A T   L A W

103

**Arthur P. Bergeron**  
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Worcester, MA 01608-1477  
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f 508.462.1385

April 1, 2010

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Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

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Very truly yours,



Arthur P. Bergeron

APB:sd  
Enclosure  
cc: Robert Moss

---

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

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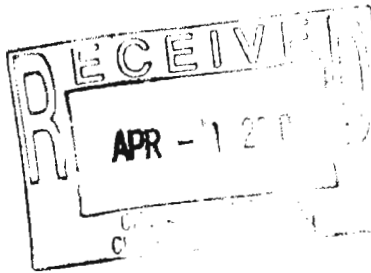
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# MIRICK O'CONNELL

ATTORNEYS AT LAW



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100 Front Street  
Worcester, MA 01608-1477  
abergeron@mirickoconnell.com  
t 508.860.1466  
f 508.462.1385

April 1, 2010

## **HAND DELIVERED**

Councilor Arthur Vigeant, President  
Marlborough City Council  
City Hall  
140 Main Street  
Marlborough, MA 01752

Re: Proposed Comprehensive Development Special Permit

Dear Councilor Vigeant:

My client, Melanson Development Group, Inc., is submitting the enclosed Comprehensive Development Special Permit application. This proposal, if approved, will allow the preservation and adaptive reuse of the Walker home on Framingham Road, while also allowing the construction of 17 new homes in a plan that will be designed to complement the restored Walker property. If possible, please schedule this matter for a public hearing at your next meeting, on April 26, 2010.

Very truly yours,

Arthur P. Bergeron

APB:sd

Enclosure

cc: Bryan Melanson

---

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

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**CITY OF MARLBOROUGH  
OFFICE OF THE CITY CLERK**

**APPLICATION TO CITY COUNCIL FOR ISSUANCE OF SPECIAL PERMIT**

1. Name and address of Petitioner or Applicant:

Melanson Development Group, Inc., 60 Glenwood Avenue, Woburn, MA 01801

2. Specific Location of property including Assessor's Plate and Parcel Number.

93 Framingham Road, Marlborough, MA 01752; Assessors Plate 93, Parcel 87

3. Name and address of owner of land if other than Petitioner or Applicant:

Celeste Walker, 990 Central St., Apt. 2, Jamaica Plain, MA 02130-3029

4. Legal interest of Petitioner or Applicant (owner, lessee, prospective owner, etc.)

5. Specific Zoning Ordinance under which the Special Permit is sought:

Article VI Section 650-27 Paragraph \_\_\_\_\_ Sub-paragraph \_\_\_\_\_

6. Zoning District in which property in question is located:

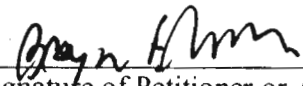
Residential A-2

7. Specific reason(s) for seeking Special Permit

Applicant is seeking a comprehensive development special permit to create 25  
housing units on the subject lot, of which 8 will be created through the  
adaptive reuse of the Walker home and attached barn, and 17 will be created  
through the creation of single-family and two-family units, all as shown on  
the plan filed herewith.

8. List of names and addresses of abutter. SEPARATE SHEET ATTACHED

PETITION IS HEREBY MADE FOR THE ISSUANCE OF A SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH AND IS BASED ON THE WITHIN PETITION OR APPLICATION AS FILED HERewith AND MADE PART OF SAID PETITION.

  
\_\_\_\_\_  
Signature of Petitioner or Applicant  
Bryan E. Melanson, President

Address: Melanson Development Group, Inc.

60 Glenwood Avenue, Woburn, MA 01801

Telephone No. (781) 844-4540

Date: April, 2010

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*City of Marlborough*  
*Commonwealth of Massachusetts*



**PLANNING BOARD**

Barbara L. Fenby, Chair  
Steve Kerrigan, Clerk  
Philip J. Hodge  
Edward F. Coveney  
Clyde L. Johnson  
Sean N. Fay

**PLANNING BOARD MINUTES**  
**March 8, 2010**  
**7:00 PM**

Carrie Lizotte, Board Secretary  
Phone: (508) 460-3769  
Fax: (508) 460-3736  
Email: CLizotte@marlborough-ma.gov

The Planning Board for the City of Marlborough met on Monday, March 8, 2010 in Memorial Hall, 3<sup>rd</sup> floor, City Hall, Marlborough, MA 01752. Members present: Barbara Fenby, Steven Kerrigan, Phil Hodge, Edward Coveney, Clyde Johnson and Sean Fay. Also present: Assistant City Engineer Richard Baldell.

**MINUTES**

***Meeting Minutes February 22, 2010***

On a motion by Mr. Kerrigan, seconded by Mr. Coveney it was duly voted:

To table the minutes of February 22, 2010.

Mr. Kerrigan withdrew his first motion.

On a motion by Mr. Fay, seconded by Mr. Mr. Hodge it was duly voted:

To accept and file the meeting minutes of February 22, 2010 as amended.

**CHAIRS BUSINESS**

***City Council Correspondence***

The City Council sent correspondence stating that the Sudbury Companies of Militia & Minute is asking to place a temporary sign at the corner of Route 20 (Boston Post Road East ) and Hagar Road. The Council approved the request to place the sign on City property with the condition that they must apply for a sign variance with the Planning Board.

On a motion by Mr. Kerrigan, seconded by Mr. Coveney it was duly voted:

To accept and file correspondence.

Mr. Hodge asked to notify Code Enforcement that if a sign is placed without the proper variances, that the code enforcement officer stress to the Sudbury Companies of Militia & Minute that a variance is needed by the Planning Board prior to placing any sign.

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On a motion by Mr. Hodge, seconded by Mr. Kerrigan, it was duly voted:

To send correspondence to Code Enforcement.

## **APPROVAL NOT REQUIRED PLAN**

### ***Crowley Drive***

*Correspondence from City Engineer*

Mr. Tim Collins of the Engineering Department has reviewed the ANR plan for Crowley Drive and can give a favorable recommendation to the Planning Board to endorse this plan.

On a motion by Mr. Kerrigan, seconded by Mr. Johnson, it was duly voted:

To accept and endorse a plan of land believed to be Approval Not Required of First Colony/Chestnut Ridge, LLC, 929 Boston Post Road East, Marlborough, MA 01752 & Toll Brothers, 135 Flanders Road, Westborough, MA 01581. Name of Engineer: GCG Associates, Inc. 84 Wilmington, MA 01887. Deed of property recorded in South Middlesex Registry of Deeds Book 48877, Page 33 with portion of the land was voluntarily withdrawn land court system; see Case No. 06-SBQ-29279-12-001, recorded in Book 48809 Page 269. Location and description of property: 3 Lots located on Crowley Drive, Assessors Map 16 Parcel 1A, and Map 29 Parcel 1.

## **PUBLIC HEARING**

### **SUBDIVISION PROGRESS REPORTS**

#### ***Update from City Engineer***

Mr. Baldelli stated that there was nothing new at this time.

#### ***Blackhorse Farms, Cider Mill Estates and West Ridge Estates (Fafard Development)***

Mr. Baldelli stated that they have had conversations regarding the subdivision with Mr. Seaberg of Fafard Development. Ms. Fenby asked if there were any further updates from the City Solicitor or from Mr. Roelofs, the attorney for the developer. Mrs. Lizotte stated that when she spoke to the City Solicitor on Thursday there was no further communication or acknowledgement from the developer's attorney.

Mr. Fay found this to be unacceptable. Mr. Fay reiterated the points that he made at the prior meeting, and stated that there is a significant difference between a developer agreeing voluntarily to ask for an extension and review the adequacy of the bond vs. acknowledging an affirmative obligation to do so. Mr. Fay questioned the adequacy of the security if in future years, the developer was not inclined to volunteer to request an extension and bond review. He stated that the Planning Board and the attorneys should continue to pursue an amicable solution and stated that he would like to invite Mr. Roelofs to the next meeting.

Mr. Kerrigan stated that if the Planning Board invites the attorney to attend the next meeting, he wanted to be clear why he was being asked to attend, and what information he would be expected to provide. Mr. Kerrigan reminded Mr. Fay that at the last meeting they had asked the two attorneys, as well as the City Engineer, to continue discussions and then report back to the Planning Board. This did not happen.

The members then discussed whether the adequacy of the security is in question without a recognition on the part of the developer that there is an affirmative obligation to request an

12:

extension, and whether the Board has an affirmative obligation to protect the public's interest and discuss taking action on the bond.

Mr. Fay stated that the Planning Board should notify the Building Commissioner that action on the bonds for the subdivisions in question is a possibility, and ask that the Building Commissioner take this under consideration if an application for a building permit is filed by the developer. Dr. Fenby said she will make an appointment with Mr. Reid to discuss the issue with him.

When asked by Mr. Fay on how they have dealt with these issues in the past, Dr. Fenby stated that they pulled the bonds. Mr. Baldelli stated at this time the Planning Board should let the communication continue between the Engineering Department and their engineer and the members agreed that continued communication was desirable.

On a motion by Mr. Kerrigan, seconded by Mr. Coveney it was duly voted:

To send correspondence to Mr. Roelofs and Mr. Rider to ask for a written update on their progress in advance of the next meeting.

***Davis Estates (Bouvin Drive)***  
***Bond Reduction***

Attorney Cipriano, on behalf of his client, is asking for a reduction of their bond and to appear before the Planning Board to discuss roadside trees and the fence around the detention basin.

On a motion by Mr. Kerrigan, seconded by Mr. Johnson it was duly voted:

To accept and file correspondence, to refer the request to the City Engineer for his review; and to ask Mr. Cipriano and Mr. Valchuis to appear at the next meeting on March 22, 2010.

***Mauro Farms (Cook Lane)***  
***Quorum Concerns***

The secretary omitted the request of an extension on the agenda. The members are concerned that with quorum constraints they would not have enough members to make the quorum in deciding extension request.

On a motion by Mr. Kerrigan, seconded by Mr. Fay it was duly voted:

To extend the request for extension until April 26, 2010.

**PENDING SUBDIVISION PLANS: Updates and Discussion**

**PRELIMINARY/ OPEN SPACE SUBDIVISION SUBMITTALS**

**DEFINITIVE SUBDIVISION SUBMISSIONS**

**SCENIC ROADS**

**SIGNS**

**INFORMAL DISCUSSION**

**Subdivision Rules & Regulations**  
***Correspondence from Mr. Fay***

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In recent weeks, the Planning Board had concerns with their Subdivision Rules and Regulations and protecting the board from having mishaps with approvals and covenants. Mr. Fay has proposed the following language to amend the Subdivision Rules and Regulations:

7. Performance Guarantee

Before endorsement of the Board's approval of a Definitive Plan of subdivision, the subdivider shall agree to complete the required improvements specified in Section V for any lots in a subdivision, such construction and installation to be secured by one, or in part by one and in part by the other, of the following methods which may from time to time be varied by the applicant with the written consent of the Planning Board.

(a) Approval with Bonds or Surety

The subdivider shall either file a proper bond or a deposit of money or negotiable securities in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements specified in Section V not covered by a covenant under sub-section (b) hereof.

The amount of the security provided hereunder shall be determined by the Planning Board in consultation with the City Engineer, taking into consideration the City Engineer's standard contingency and inflation factors.

Such bond or security, if filed or deposited shall be approved as to form and manner of execution by the City Solicitor and as to sureties by the City Treasurer. The legal sufficiency of the bond shall be contingent upon the completion by the subdivider of the required improvements specified in Section 5 within two (2) years of the date of the bond.

If the improvements specified in Section V not covered by a covenant under sub-section (b) hereof are not completed within two (2) years of the date of the bond, such completion to be certified in writing by the City Engineer, the Planning Board shall proceed with enforcement thereof as provided in §81Y of the Subdivision Control Law unless the Planning Board takes one of the following actions:

- i. The Planning Board, on its own, grants an extension of the two (2) year completion date for a period of not more than sixty (60) days to allow a subdivider to submit the documentation required for a complete extension request; or,
- ii. The Planning Board, upon request of the subdivider, grants a request not to exceed two (2) years from the date such extension is approved. Any such extension shall be contingent upon the following:
  - a. Written certification from the City Engineer that the bond or other security currently in place, or in place at the date such approval is granted by the Planning Board, is in an amount sufficient to cover the cost of all or any part of the improvements specified in Section V not covered by a covenant under sub-section (b) hereof, taking into consideration the City Engineer's standard contingency and inflation factors;
  - b. Written certification from the City Tax Collector that all real estate taxes for the sub-division are paid to date; and,
  - c. Written certification from the Code Enforcement Officer or Building Commissioner stating that the sub-division is free from any violations of the City's Anti-Blight Ordinance.

This section shall be applicable to all subdivisions within the City of Marlborough, regardless of the date of approval thereof. Should, as of the effective date of this section, a subdivider have a bond or other security in place, and the improvements specified in Section V not covered by a covenant under sub-section (b) hereof in said subdivision have not been completed within the applicable two (2) year time period without an extension, said completion date shall be

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automatically extended for one (1) year from the effective date hereof. The Planning Board shall provide such subdivider with written notice of the extension and the affirmative obligation on the part of the subdivider to request an extension pursuant to the provisions hereof.

(b)Approval with Covenant

The subdivider shall file a covenant, executed and duly recorded in the Registry of Deeds by the owner of record, running with the land, whereby such ways and services as specified in Section V, not covered by bond or deposit under (a) hereof, shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed.

The developer shall also note on his Definitive Plan that any and all lots within the subdivision are subject to the restrictions of the covenant.

On a motion by Mr. Kerrigan, seconded by Mr. Fay it was duly voted:

To send the proposed amendment to the City Planner, City Engineer, and the City Solicitor for their review; to have them report back to the Planning Board with their comments at the next meeting on March 22, 2010.

**COMMUNICATIONS/CORRESPONDENCE**

On a motion by Mr. Kerrigan, seconded by Mr. Coveney, it was duly voted:

To accept all of the items listed under communications and/or correspondence.

On a motion by Mr. Coveney, seconded by Mr. Kerrigan, it was duly voted:

To adjourn at 8:15 p.m.

**A TRUE COPY**

ATTEST:

  
Steven Kerrigan, Clerk



**CITY OF MARLBOROUGH  
OFFICE OF TRAFFIC COMMISSION  
140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752**

**Traffic Commission**

The Regular Meeting of the Traffic Commission was held on February 23, 2010 at 10:05 a.m. in City Council Committee Room, City Hall. Members present: Chairman Police Chief Mark Leonard, Vice Chairman – DPW Commissioner Ronald LaFreniere, Acting Fire Chief Fred Flynn, City Clerk Lisa Thomas, City Planner Nancy Savoie, Also present: Asst. Civil Engineer Tim Collins, City Councilor Ed Clancy, and Private Citizens - Karen Baker and Robert Stupik. Minutes taken by: Karen Lambert, MPD Records Clerk.

**1- Minutes**

The minutes of the Traffic Commission meeting of Tuesday, January 26, 2010.

MOTION was made, seconded, duly VOTED:  
To APPROVE.

**2-New Business**

**2b. Request for parking restrictions on Spring Street @ Elm Street.**

The Commission received a letter from Karen Baker and Robert Stupik (residents of Spring Street) regarding tractor trailer trucks that have been parking on Spring Street – for years on and off. Chief Leonard advised that there is a city wide parking restriction on any residential street for vehicles 5 tons and over. The Chief also said that even passenger vehicles are not allowed to park on public roads overnight at this time of year due to the winter parking ban. He also recalls something in the Zoning Regulations that states that commercial vehicles are restricted from parking in residential areas. There is also a regulation stating that there is no parking within 20 feet from any intersection. Ms. Baker and Mr. Stupik said that the two specific vehicles in question (one truck cab and one full 18 wheeler) are definitely in violation of this order as they obstruct the intersection at Elm St. They are also parking overnight and then starting up at 2:00 to 4:00 am. Chief Leonard advised that he has sent a message to his officers regarding enforcement. He suggested trying enforcement first rather than adding additional restrictions. He also suggested that Ms. Baker and Mr. Stupik call the station when the trucks are parked there. The officers may be able to track down the owners and advise them that they can't park at this location.

MOTION was made, seconded, duly VOTED to REFER to the POLICE DEPARTMENT for enforcement.

**2a) Request for 2 hour parking in front of 12 Main Street.**

Ron LaFreniere spoke to Mr. Renzi (cobbler shop) regarding the parking space in front of his property. He is requesting that the spot be posted as "2 hour parking". The problem is that there is a neighbor parking a personal vehicle in this spot all day. Tim Collins advised this particular spot is not currently regulated. At the time the 2 hour parking restriction was developed for the rest of Main Street, the plans (Streetscape Construction Plans) did not show a parking space in this location. It was initially a residential area.

MOTION was made, seconded, duly VOTED to REFER to Chief Leonard to amend the current Regulations to include this location in the 2 hour parking restriction – making it consistent with the rest of Main Street.

**Additional New Business Item – not on original Agenda**

**2c) Safety concerns at the I290 Connector and Fitchburg Street.**

Nancy Savoie (City Planner) received an e-mail from a concerned citizen, Amy Roberts, regarding safety concerns at this intersection. She described a very close call her family had with a driver "who ran the red light going 60 mph". She explained that this is not the first time they have seen drivers run the red light still traveling at highway speeds. She initially sent her request to the Town of Hudson but was directed to the City of Marlborough to see if there were any improvement projects in this works at this location. Ron LaFreniere advised that this area is under the jurisdiction of the Mass. Highway Dept. He has talked with them in the past about the dangers of this intersection. He noted that there is a comprehensive traffic study currently being conducted further down at the Rte. 495 / Rte. 290 interchange but it does not include the area in question. Ron explained that we saw the biggest improvement in the area when the Stratus bldg. went in. There was an obligation on the developer's part to do some improvements, i.e. widening the roadway to include dedicated turning lanes. People do not expect to see traffic light here when they are coming off 290. Ron suggested that Ms. Roberts send a letter directly to the MHD addressing her concerns. He can provide Nancy with the appropriate addresses. Ed Clancy asked if there was a way to increase the timing of the light from red to green. He also suggested a possibility of a stop sign rather than a yield sign when making a right turn toward Hudson.

MOTION was made, seconded, duly VOTED to REFER to Nancy Savoie, City Planner, to give Ms. Roberts an update and provide her with the addresses of the proper parties at MHD.

**3-Old Business**

**3j) Parking restrictions/signage on Lincoln St. @ Cross St.**

Chief Leonard presented the amended regulations to the Commission for a vote.



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MOTION was made, seconded, duly VOTED to ACCEPT the new regulation DELETING the one hour parking from both sides (North and South) of Lincoln Street.

MOTION was made, seconded, duly VOTED to ACCEPT the new regulation ADDING the proper 1 hour parking restrictions to the South side of Lincoln Street.

Chief Leonard will send the amended regulations to Lisa Thomas for advertisement.

**3a) Municipal off street parking regulation.**

MOTION was made, seconded, duly VOTED:  
To TABLE.

**3b) High School parking regulations.**

MOTION was made, seconded, duly VOTED:  
To TABLE.

**3c) Communication from Kenneth Almeida, re: Four way stop request – Porter Rd. @ Phippen Rd.**

MOTION was made, seconded, duly VOTED:  
To TABLE for now as traffic counts have not yet been conducted.

**3d) Stop signs on Bigelow Street.**

MOTION was made, seconded, duly VOTED:  
To TABLE for now as traffic counts have not yet been completed.

**3e) Traffic Commission rules and regulations update.**

MOTION was made, seconded, duly VOTED:  
To TABLE

**3f) Communication from Kevin Flynn, re: Grant of Authority to enforce traffic regulations at CDA (Community Development Authority) senior housing locations.**

MOTION was made, seconded, duly VOTED:  
To TABLE

**3g) Request for stop signs on Weed St. at Court St.**

This issue was discussed further as no formal decision was made at the last meeting. Tim Collins mentioned the possibility of moving the crosswalks closer to the intersection. Any proposed stop signs would need to be placed 4 feet prior to approaching a crosswalk. Moving the crosswalks would allow the stop signs to be placed in a more appropriate location relative to the intersection. Tim also mentioned that the stop sign at Granger Blvd. is the only regulated stop sign on Court Street.

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MOTION was made, seconded, duly VOTED to refer to ENGINEERING for further review.

**3h) Communication from Amy Loveless, re: van parking spaces in front of Senior Center, 240 Main Street.**

**3i) Traffic management plan for "Reach Out for Schools" road race on Donald Lynch Blvd., May 2, 2010.**

MOTION was made, seconded, duly VOTED:  
To TABLE

That there being no further business of the Traffic Commission held on this date, meeting adjourned at 11:00 a.m.

Respectfully submitted,  
Karen L. Lambert - Records Clerk, MPP